3062.

SUPREME COURT OF THE UNITED STATES.

No. 71.

CHARLES W. GAZZAM, PL'FF IN ER.,

vs.

LESSEE OF ELAM PHILLIPS AND MARY, HIS WIFE, AND ASHBY W. ETHERIDGE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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Be it remembered that at a term of the supreme court of the State of Alabama, begun and held on the first Monday of January, in the year of our Lord eighteen hundred and fifty-six, in the case of Charles W. Gazzam vs. Elam Philips and Mary Philips, his wife, and Ashby W. Etheridge, brought up to the June term, 1855, of said court, the following proceedings were had in said cause, before Hon. Saml. F. Rice, chief justice, Hon. A. J. Walker, associate justice, Hon. G. W. Stone, associate justice.

STATE OF ALABAMA,
Mobile County.

Be it remembered that at a term of the circuit court, begun and held in and for the county of Mobile, on the third Monday after the fourth Monday of March, (being the 18th day of April,) in the year of our Lord one thousand eight hundred and fifty-five, the honorable Andrew B. Moore, judge, presiding, the following proceedings were had:

Declaration.

STATE OF ALABAMA,
County of Mobile.

JOHN DOE ex dem.,
PHILIPS & ETHERIDGE
vs.
CHARLES W. GAZZAM.

In the circuit court of said county, of the term of the third Monday after the fourth Monday of March, A. D. 1850.

John Doe, plaintiff, by his attorneys, complains of Richard Roe, defendant, in custody, &c., of a plea of trespass in ejectment, &c., wherefore the said Richard Roe, with force and arms, &c., broke and entered into a certain lot of ground in the city and county of Mobile, with the appurtenances and tenements thereon, &c., which Elam Philips and his wife, Mary Philips, late Mary Etheridge, and Ashley W. Etheridge, has demised to the said John Doe, for term which has not yet expired; and also, with force and arms, &c., entered into a certain other lot of ground in the city and county of Mobile, with the appurtenances and tenements thereon, which Elam Philips and his wife, Mary Philips, has demised to the said John Doe, for term which has not yet expired; and also, with force and arms, &c., entered into a certain other lot of ground in the city and county of Mobile, with the appurtenances

and tenements thereon, which Ashley W. Etheridge had demised to said John Doe, for a term which is not expired; and ejected him from his said lots, and other wrongs to the said John Doe there did, to the great damage of the said John Doe, and against the peace and dignity of the State of Alabama: That whereas Elam Philips and his wife, Mary Philips, and Ashley W. Etheridge had demised to the said John Doe, on the first day of May, 1840, at Mobile, in the county of Mobile, the said lot of ground first above mentioned, situate, lying, and being in the city and county of Mobile, and described as follows: Beginning at a stake on the east side of a ditch, and on the south boundary of Government street, being the northeast corner of the lands belonging to the Mobile College, and heretofore conveyed to Norman Pinney by said Gazzam, and running thence with the course of said ditch south three and one-fourth degrees east, five hundred and ninety-seven feet, to a stake on the eastern margin of said ditch; thence south eighty-five and three-fourths west, three hundred and fourteen feet, to a stake on the north side of a ditch, and on the eastern margin of Ann street; thence along said eastern margin of Ann street five hundred and forty-six feet to the south boundary line of Government street; thence along the said south boundary line of Government street two hundred and twenty-eight feet to the place of beginning, containing four 8-100 acres: To have and to hold to the said John Doe and his assigns from thenceforth, for and during and unto the full end and term of twenty years from thence next ensuing fully to be complete and ended; and also that whereas the said Elam and his wife Mary, at Mobile, in the county of Mobile, on the first day of May, 1840, had demised the said lot of ground secondly above mentioned, lying and being in the city and county of Mobile, and described as follows: Beginning at a stake on the east side of a ditch, and on the south boundary of Government street, being the northeast corner of the lands belonging to the Mobile College, and heretofore conveyed to Norman Pinney by said Gazzam, and running thence with the course of said ditch south three and one-fourth degrees east, five hundred and ninety-seven feet, to a stake on the eastern margin of said ditch; thence south eighty-five and three-fourths degrees west, three hundred and fourteen feet, to a stake on the north side of a ditch, and on the eastern margin of Ann street; thence along said eastern margin of Ann street five hundred and forty-six feet to the south boundary line of Government street; thence along the said southern boundary line of Government street two hundred and twenty-eight feet to the place of beginning, containing four 8-100 acres: To have and to hold the last-described lot of ground to the said John Doe and his assigns from the said first day of May, in the year eighteen hundred and forty, for and during and unto the full end and term of twenty years from thence next ensuing, and fully to be complete and ended.

And whereas also the said Ashley W. Etheridge, on the first day of May, in the year eighteen hundred and forty, at Mobile, in the county of Mobile, had demised to the said John Doe the said lot of ground thirdly above mentioned, situate, lying, and being in the city and county of Mobile, and described as follows: Beginning at a stake on the east side of a ditch, and on the south boundary of Government street, being the northeast corner of the lands belonging to the Mobile College, and heretofore conveyed to Norman Pinney by said Gazzam, and running thence with the course of said ditch south three and a fourth degrees east, five hundred and ninety-seven feet, to a stake on the eastern margin of said ditch; thence south eighty-five and three-fourths degrees west, three hundred and fourteen feet, to a stake on the north side of a ditch, and on the eastern margin of Ann street; thence along said eastern margin of Ann street five hundred and forty-six feet to the south boundary line of Government street; thence along the said southern boundary line of Government street two hundred and twenty-eight feet to the place of beginning, containing four 8-100 acres: To have and to hold the said last-described lot of ground to the said John Doe and his assigns, from the said first day of May, in the year eighteen hundred and forty, for and during and unto the full end and term of twenty years from thence next ensuing, and fully to be complete and ended; by virtue of which said several demises, the said John Doe entered upon the said several lots of ground above mentioned, with the appurtenances, and became and was thereof possessed for the said several terms so to him thereof respectively granted, as aforesaid; and the said John Doe being so thereof possessed; the said Richard Roe afterwards, to wit, on the first day of May, 1841, with force and arms, &c., entered into and upon the said several lots of ground first above mentioned, with the appurtenances, which the said Elam Philips and his wife, Mary Philips, and Ashly W. Ethridge, and said Elam and his wife Mary, and said Ashly had demised to the said John Doe, in manner and for the several terms aforesaid, which terms are not yet expired, and ejected the said John Doe from his said lots, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace and dignity of the State of Alabama; wherefore the said John Doe saith that he is injured, and hath sustained damages to the value of ten thousand dollars, and therefore he brings his suit, &c., &c.

TAYLOR & SMITH,
Attorneys for the Plaintiff.

Notice.

To Charles W. Gazzam:

I am informed that you are in possession of or claim title to the premises in this declaration of ejectment mentioned, or some part

thereof, and I, being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear at the next term of our circuit court for Mobile county, to be held on the third Monday after the fourth Monday of March, 1850, on the first day of said term, before the judge of said court, at the court house of said county, by some attorney of said court, and then and there by rule of the same court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment thereon to be entered by default, and you will be turned out of possession.

Your loving friend,
RICHARD ROE.

Mobile, the seventh day of April, 1850.

Sheriff's Return.

Rec'd 9th April, 1850; and on the 10th April, 1850, executed by serving a copy of this notice to C. W. Gazzam.

JAMES F. HUTCHISSON,
Sheriff M. C.

Plea.

The defendant comes into court and admits lease, entry, and ouster. He says, he owns and is in possession of a parcel of land at the southeast corner of Ann and Government streets, measuring, from Ann street to the west line of the Pinney College tract, 314 feet. That he has none of the lands in the Pinney College tract in his possession. He denies that this land is in the limits described by the declaration, and he is allowed to contest that.

The defendant pleads not guilty and statute of limitations.

CAMPBELL & CHANDLER,
For Def't.

Judgment.

And on the 4th of May, 1855, judgment was rendered as follows:

JOHN DOE, ex dem., ELAM PHILIPS, and MARY PHILIPS his wife, and ASHLEY W. ETHERIDGE
vs.
CHARLES W. GAZZAM.

This day came the parties, by their attorneys, and the defendant, Charles W. Gazzam, having confessed the lease, entry, and ouster, and also, that he was in possession of the premises and lands in the declaration described at the service of the writ, he was, by the court, permitted to become a party to the suit and defend the

same; and thereupon, he pleaded not guilty, and suggested that he had had the adverse possession of said land for more than three years next preceding the beginning of this suit, and that he has made valuable and permanent improvements thereon. And issue being joined between the parties, thereupon came a jury of good and lawful men, to wit: Eug. G. Meslur and eleven others, who being duly empanneled, elected, tried, and sworn, well and truly to try the issue joined, on their oaths do say: We, the jury, find the defendant guilty of the trespasses in the ejectment mentioned, and that the plaintiffs are entitled to two undivided two-thirds of the land in the declaration mentioned, to wit, situate, lying, and being in the city and county of Mobile: Beginning at a stake on the east side of a ditch, and on the south boundary of Government street, being the northeast corner of the lands belonging to the Mobile College and heretofore conveyed to Norman Pinney by said Gazzam, and running thence with the course of said ditch south three and one fourth degrees east, five hundred and ninety-seven feet to a stake on the eastern margin of said ditch, thence south eighty-five and three-fourths degrees west, three hundred and fourteen feet to a stake on the north side of a ditch, and on the eastern margin of Ann street, thence along said eastern margin of Ann street five hundred and forty-six feet to the south boundary line of Government street, thence along the said south boundary line of Government street five hundred and twenty-eight feet to the place of beginning, containing four 8-100 acres. And we assess the value of the said two-thirds of said land at nine hundred and thirty-three 33-100 dollars, being $350 00 per acre; and we further find the suggestion of the defendant true, and assess the value of his permanent improvements on said land at fifteen thousand dollars. It is therefore considered by the court, that the plaintiff recover of said defendant the said two-thirds of said lands, together with his costs in this behalf expended.

Bill of Exceptions.

DOE, ex dem., PHILIPS and ETHERIDGE,
vs.
ROE, CHARLES GAZZAM.

CIRCUIT COURT OF MOBILE.

Be it remembered, that on the trial of this cause the plaintiffs proved that they were two of the heirs-at-law of James Etheridge, and introduced a patent from the government, a copy of which is here inserted as part of the bill of exceptions, marked A, and gave evidence showing that the premises in question were within the bounds of a square half-mile, and within the bounds of what were said quarter section, computing the same according to the usual measurement of a quarter of a section, and were in the eastern divis-

ion of it, as delineated by the lines drawn through the section, as shown hereafter.

The defendant claimed under William D. Stone, and gave in evidence titles from him, and also gave in evidence a patent to said Stone, a copy of which is hereto appended, marked B. The proof showed that by reason of private claims, which were confirmed by act of Congress before these pre-emptions were granted, section 22, was an irregular body of land, thus:

[For diagram, see page 8.]

containing 203 17-100 acres only; that the surveyor general, in furnishing maps to the land office at St. Stephen's, (in which was the premises,) so designated the land, and also delineated in the map a north and south line cutting section 22 into two parts, leaving on the east of the line 110 50-100 acres, and on the west 92 67-100 acres; that Etheridge paid only for the number of acres on the west side, and Stone those on the east side; and that the possessions of the parties had since been in accordance therewith.

The proof also showed, that when Etheridge and Stone severally applied for their pre-emptions the township plats had not been furnished to the local office, and that their applications were received under instructions from the general land office, of which a copy is appended and made part of this bill of exceptions, marked C.

The defendant gave in evidence the following paper, showing the practice of the executive branch of the government, duly rectified, and the following deposition of Magoffin, marked D and E, showing the custom, &c., of the land offices; also the 2 volume of Clarke's Land Laws and Opinions, which may be read in the appellant court; and also the following government surveys, marked F; (the clerk will here copy the several government surveys given in evidence appended hereto.)

The defendant also gave evidence, by surveys made upon the ground and proofs by the surveyor, tending to show that a square quarter section of half a mile each way could not be got in section 22, but that by reason of the line of the Espejo grant, which grant was confirmed under act of 1819, and surveyed in 1835, as is shown by the certificate and survey hereto appended and made part of this bill of exceptions, marked G, an intersection was made by it with the north and south line of section 22, south of the half-mile point, so that Etheridge could not get a full quarter-section under his pre-emption without interfering with the Espejo grant. The diagrams in the reported case of Brown and wife vs. Clements et al., in 3 Howard's United States Supreme Court Reports, page 650, may be referred to for illustration as to the size, form, and contents of setion 22, and to show the north and south line delineated on the township maps by the surveyor general, dividing said section into two divisions, one eastern and the other western, and

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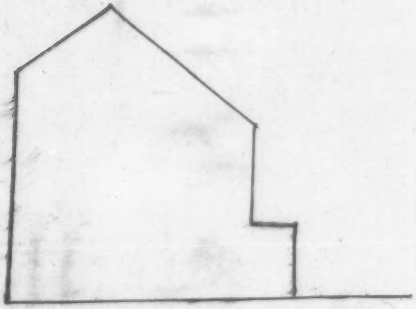

the contents of each division—the tract there represented being the one of which the premises in question form a part. The proof in in this case, however, tended to bring down the Espejo line so as to intersect the section line of section 22 south of the half-mile point, having less than forty chains or half a mile from the southern corner of section 22 to the Espejo line.

Proof also showed the facts recited in the charge of the court respecting the applications of Stone and Etheridge for pre-emptions.

The court charged the jury that the written evidence of pl'ffs showed that J. Etheridge made application at the land office for the south west ¼ of section 22, t. 4, and r. 1 west, under the pre-emption act of Congress of the 29th of May, 1830; this application was made on the 28 January, 1831. The certificate of purchase was issued to him the 29 May, 1833; and that Stone's application was made, as shown by the evidence in writing, on the 25th March, 1831, for the fraction in the west part of the s. e. ¼ of section 22, t. 4 and r. 1 west; and his patent, for the land described therein, issued 17 Dec'r 1832.

Under Etheridge's application the whole of the s. w. ¼ of sect. 22 was appropriated to him.

That Stone's claim arose under the same act of Congress, and he is confined to the fraction in the west part of the s. e. ¼ of sec. 22, and it gave him no right to land elsewhere or in the s. w. ¼ of sec. 22.

The court further charged the jury, that the general mode of surveying lands by the general government was by townships, sections, quarter-sections and half-quarters, and that Etheridge was entitled, under the pre-emption act, to the southwest quarter of sect. 22, unless a part of it had been previously covered by some private claim; and in that event he would take the residue of *of* said s. w. ¼ of sec. 22, be it much or little. That it was immaterial whether the Espejo claim crossed the line and reduced the number of acres below a ¼ sect. or not.

Etheridge's application being for the s. w. ¼ sec., he takes so much of it as was not taken by the Espejo claim.

The court said, that such would not have been his charge, but for the decision of Brown and wife vs. Clements et al., reported in 3 Howard, page 550.

The court was asked to charge—

1. That if by the intersection of the half-mile line by the Espejo grant, Etheridge could not get a square quarter of a section in fractional section 22, then he only took the western portion of the section, as delineated on the map at the land office, at the time he obtained his pre-emption; which the court refused, and the defendant excepted.

2. That all Etheridge could claim under his patent was the actual southwest quarter of section 22, and that this meant the quarter of that section, and had no relation to a usual quarter-section

of half-mile square, but meant the fourth part of that particular fractional section, to be located on the southwest of the section; which was refused, and defendant excepted.

3. Defendant asked the same charge, upon the hypothesis that the jury should believe that said section was a fractional one, and only contained two hundred and three 17-100 acres, and that it was so represented on the township map, and so known to Etheridge when he obtained his certificate of pre-emption; which the court refused, and the defendant excepted.

The court was asked by defendant further to charge the jury, that if sec. 22 was a fractional section, represented by irregular lines, and containing only $203\frac{17}{100}$ acres, and that if it was so returned and so represented on the township maps in the land office where Etheridge obtained his pre-emption, and that at said time said fractional section had been divided by the surveyor general by a north and south line delineated on the map, and the maps contained no other division of section 22, and Etheridge knew that by the southwest quarter thereof the land officers only intended to sell him the western division of the section, as shown by said line, and he only paid for so many acres as were west of that line, the plaintiff cannot recover; to which the court refused, and the defendant excepted.

And for which charges and refusals the defendant prays a bill of exceptions may be signed and sealed, which is done in open court this the 5th of May, 1856, it being the day the verdict was rendered, and the morning after the evening when the cause went to the jury.

A. B. MOORE, [L. S.]
Presiding Judge.

Exhibit A. Pre-emption certificate number 4,539.

The United States of America to all to whom these presents shall come, greeting:

Whereas James Etheridge, of Mobile county, Alabama, has deposited in the General Land Office of the United States a certificate of the register of the land office at St. Stephen's, whereby it appears that payment has been made by the said James Etheridge, according to the provisions of the act of Congress of the 24th April, 1820, entitled "An act making further provisions for the sale of the public lands," for the southwest quarter of section twenty-two, in township four, south of range one west, in the district of land subject to sale at St. Stephens, Alabama, containing ninety-two acres and sixty-seven-hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said James Etheridge:

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said James Etheridge, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said James Etheridge, and to his heirs and assigns forever.

In testimony whereof, I, Andrew Jackson, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land office to be hereunto affixed.

Given under my hand, at the city of Washington, the thirtieth day of May, in the year of our Lord one thousand eight hundred and thirty-three, and of the independence of the United States the fifty-seventh year.

By the President. ANDREW JACKSON.
By A. J. DONELSON, [L. S.]
ELIJAH HAYWOOD,
Commissioner of the General Land Office.

Exhibit B. Pre-emption certificate No. 4,549.

The United States of America to all to whom these presents shall come, greeting:

Whereas William D. Stone, of Mobile, has deposited in the General Land Office of the United States a certificate of the register of the land office at St. Stephen's, whereby it appears that full payment has been made by the said William D. Stone, according to the act of Congress of the 24th April, 1820, entitled "An act making further provision for the sale of the public land," for the southeast subdivision of fractional section twenty-two, in township four, south of range one west, in the district of lands subject to sale at St. Stephen's, Alabama, containing one hundred and ten acres and fifty-one-hundredths of an acre, according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said William D. Stone.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William D. Stone, and his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said William D. Stone, and to his heirs and assigns, forever.

In testimony whereof, I, Andrew Jackson, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereto affixed.

Given under my hand, at the city of Washington, the seventeenth day of December, in the year of our Lord one thousand eight hundred and thirty-two, and of the United States of America the fifty-seventh year.

By the President. ANDREW JACKSON.

JOHN MOORE,
Acting Comr. of the General Land Office.

(Copy.) *Exhibit C.*

GENERAL LAND OFFICE, *February* 7, 1832.

GENTLEMEN: I have examined your report of the 18th November last on the pre-emption claim of William D. Stone, and a diagram from the corrected plat, showing that a portion of the land so claimed is already covered by confirmed claims.

You will take the necessary steps to ascertain upon what particular subdivisions of fractions the improvements of the claimants were actually made, and admit their claims to pre-emption in accordance with the corrected plat, the law, and instructions from this office.

With great respect, your obedient servant,
ELIJAH HAYWOOD.

To the REGISTER and RECEIVER
Of the Land Office, at St. Stephen's, Ala.

LAND OFFICE, ST. STEPHEN'S, ALA.,
February 22, 1851.

I do hereby certify that the annexed and foregoing is a correct copy from the original, as found on file in this office.

Witness my hand and private seal, having no seal of office.
JAMES MAGOFFIN, *Register.*

(Copy.) *Circular.*

GENERAL LAND OFFICE, *February* 7, 1831.

GENT.: In all cases where individuals residing on public lands which shall have been surveyed prior to 30th May, 1831, are unable to avail themselves of the benefits of the pre-emption law of 29th May, 1830, under the instructions from this office, dated 10th June, 1830, by reason of the township plats not having been furnished by the surveyor general to the register of the land office, the parties entitled to the benefit of said act may be permitted to file the proof thereof, under the instructions heretofore given iden-

tifying the tract of land as well as circumstances will admit, any time prior to 30th May next.

You are requested to keep a proper abstract or list of all such cases wherein the proof shall be of a character sufficient to establish to your entire satisfaction the right of the parties respectively to a pre-emption, and transmit a copy thereof to this office after the 29th May next. No payments, however, are to be received on account of pre-emption rights duly established in cases where the townships are known to be surveyed, but the plats whereof are not in your office, until you shall [have] received further instructions.

In all cases, however, where the plats shall be filed subsequently to the receiving of such proof, and before the 30th May next, payment may be made and receipt and certificates of purchase be issued as usual.

I am, very respectfully, gent., your obed. servant,

ELIJAH HAYWOOD,
Commissioner.

The REGISTER and RECEIVER,
St. Stephen's, Ala.

LAND OFFICE, ST. STEPHEN'S, ALA.,
February 22, 1851.

I do hereby certify that the annexed and foregoing is a correct copy of the orginal on file in this office.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, [SEAL.]
Register.

Exhibit D.

To the register and receiver of the land office, at St. Stephen's, Al.:

You will please to take notice, that I, William D. Stone, of Mobile county, Alabama, claim the right of pre-emption, under the act of Congress of the 29th May, 1830, to the fraction situated on the west part of the southeast quarter of section 22, in township 4, range 1, west of B.

WM. D. STONE.

William D. Stone being sworn, maketh oath that the above-described tract of land was planted and cultivated by him in the year 1829, and remained in his possession from the year 1829 until the 29th May, 1830, and that the said land was occupied and cultivated by him in his own right, and not as the tenant of any other person; that the said tract of land was enclosed with his own fence, and that there was no person concerned or connected with him in the occupation and cultivation of said land, and that the present claim does not interfere with the rights of any other person; and

further, that the tract described is within the present corporate limits of the city of Mobile.

WM. D. STONE.

Sworn and subscribed before me the 25th March, 1831.

Samuel H. Garrow and James Dowell being duly sworn, make oath that they are acquainted with the situation of the above-described tract of land; that the said land was cultivated by the said Wm. D. Stone in the year 1829, and remained in his possession until after the 29th May, 1830, and that they believe the above affidavit of the said Wm. D. Stone to be correct and true.

S. H. GARROW,
JAMES DOWELL.

Sworn and subscribed before me, 25th March, 1831.

STATE OF ALABAMA,
City and County of Mobile.

Personally appeared before me, Henry Daggett, a notary public for the State and county aforesaid, duly commissioned and sworn, and legally authorized to administer oaths, the within-named Wm. D. Stone, Samuel H. Garrow, and James Dowell, who, being duly sworn, made oath that the foregoing affidavits by them subscribed are in every respect just and true.

In testimony whereof, I have hereunto subscribed my name, and affixed my notarial seal, in the year of our Lord one thousand eight hundred and thirty-one.

HENRY DAGGETT,
[L. S.] *Notary Public.*

Register of certificate of land sold at St. Stephen's, Ala., (by the register.)

Date of certificate.	No. of certificate.	Name.	Residence.	Sub-frac. or part.	T.	R.	Quantity.	Price. per acre.	Am't of purchase money.
1832. April 30.	4547	Wm. D. Stone.	Mobile co.	SE. sub-frac. 22.	4 So.	1 W.	110.50	1.25	138.93

Register of moneys paid for lands sold at the Land Office, St. Stephen's, Ala.

Date of regst.	No. of regst.	Name.	Residence.	Sec. or part.	T.	R.	Quantity.	Price of acre.	Amount.
1832. April 30.	4547	Wm. D. Stone.	Mobile co.	SE. sub-f. 22.	4	1 W.	100.50	1.25	138.13

LAND OFFICE OF ST. STEPHENS, ALABAMA.

Abstract of claims to pre-emptions to lands that are reported to have been surveyed, but the township plots not furnished this office.

No. of claim.	By whom claimed.	Residence.	Tract.	Quantity.	Rate.	Amount.
15	Wm. D. Stone.	Mobile co.	Fractions 22 and 27. 4 1 W.			

LAND OFFICE AT ST. STEPHEN'S, ALA., *Dec.* 31, 1836.

I do certify that the within transcript, from page one to eight, inclusive, is correctly copied from the records and pre-emption claim of Wm. D. Stone, as found on file in this office, and that it is all that is found on said pre-emption claim.

JAMES MAGOFFIN, *Register.*

Gazzam vs. Lessee of Phillips et al.

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Register of lands sold at the Land Office at St. Stephen's, Ala.

Date.	Purchaser.	Residence.	No. of pre-empt.	Part of section.	S.	T.	Range.	Acres.	Price per acre.	Amount.
1832. April 30.	Wm. D. Stone.	Mobile co.	4547	SE. subdn. fr.	22	4	100	110 50-100	1.25	136.13

Pre-emption, No. 4539. Act 29th May, 1830.

LAND OFFICE AT ST. STEPHEN'S, ALA., *30th April*, 1832.

It is hereby certified that, in pursuance of law, James Etheridge, of Mobile county, Alabama, on this day purchased of the register of this office the lot or southwest quarter of section number twenty-two, of township number four south, in range number one west, containing ninety-two 67-100 acres, at the rate of one dollar and twenty-five cents per acre, amounting to one hundred and fifteen 83-100 dollars, for which the said James Etheridge has made payment in full, as required by law.

Now, therefore, be it known, that on the presentation of this certificate to the Commissioner of the General Land Office, the said James Etheridge shall be entitled to receive a patent for the lot above described.

JOHN B. HAZZARD,
Register.

Pre-emption, No. 4547. Act 29th May, 1830.

LAND OFFICE AT ST. STEPHEN'S, ALA., *30th April*, 1832.

It is hereby certified that, in pursuance of law, William D. Stone, of Mobile county, Alabama, on this day purchased of the register of this office the lot or southeast subdivision of fractional section number twenty-two, of township number 4 south, in range number one west, containing one hundred and ten 50-100 acres, at the rate of one dollar and twenty-five cents per acre, amounting to one hundred and thirty-eight 13-100 dollars, for which the said William D. Stone has made payment in full, as required by law.

Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said William D. Stone shall be entitled to receive a patent for the lot above described.

JNO. B. HAZZARD,
Register.

WASHINGTON CITY, 22*d March*, 1837.

Hon. JAMES WHITECOMB,
Commissioner, &c., &c.

SIR: The points in Etheridge's case, now before you for your decision, are as follows, and I respectfully pray your decision upon them:

1st. Whether Mr. Etheridge's rights under the pre-emption law, having been claimed and allowed on the southwest quarter of sec. 22, and the money offered for the same, before the survey was made, should not have been respected and preserved, in the subdivision of the same?

2d. Suppose a settler and claimant under the pre-emption law, on each quarter and fractional quarter of sec. 22, would the subdivision made be, under the facts supposed, legal?

If it is illegal in one case, is it not in both?

3d. Was not Mr. Etheridge's right under the pre-emption law a vested right, after his claim and proof, and after its allowance to the southwest quarter?

4th. Do not the pre-emption law of 1830, and the surveying laws of the U. S., require the subdivisions of fractional sections into quarter sections and fractional quarter sections? And should not fractional section 22 have been so subdivided? And especially as there were private rights under the pre-emption law to be preserved by such a subdivision?

5th. Is the subdivision of sec. 22, as it has been made, legal? and if so, by what law?

6th. If not legal, what subdivision would be legal?

After the decision of these questions, I will ask leave to present some authorities to show that this office has the power to correct the error or mistake in the area of Etheridge's patent, on his paying the money for the additional number of acres to be inserted therein, &c.

Very respectfully,

CHAS. E. SHERMAN.

GENERAL LAND OFFICE,
5th April, 1837.

SIR: I have fully examined the questions submitted by you relative to a new subdivision of fractional section No. 22, township 4 south, range 1 west, St. Stephen's land district, and have come to the conclusion that it would be improper for me to interfere with the subdivisions that have been established.

I am, very respectfully, your obt. servt.,

JAS. WHITECOMB,
Commissioner.

CHARLES E. SHERMAN, Esq.,
Washington City.

WASHINGTON CITY, *5th April*, 1837.

Hon. JAMES WHITECOMB,
Comm., &c., &c.

I have just ascertained the decision made in the case of Etheridge, and respectfully request that an appeal may be granted to the Hon. Secretary of the Treasury. I will take it as a great favor if the appeal be made up forthwith.

Very respectfully, your obt. servt.,
CHAS. E. SHERMAN,
For Etheridge.

Let an appeal be granted in this case, April 5, 1837.
JAS. WHITECOMB,
Commissioner.

WASHINGTON CITY, 14*th April*, 1837.

Hon. JAS. WHITECOMB,
Comm., &c., &c.

SIR: 1st. I will thank you to inform me whether, to your knowledge, any instance has occurred under the pre-emption law where an individual who was settled upon a fractional quarter-section of the public lands, and who complied with the requirements of those laws, by making his proof and payment, or legal tender of payment, in the time required, who has in consequence of the subdivisions of the surveyor gen'l been deprived of receiving anything?

2d. Has there been any case under said laws, when two persons settled on different quarters of f'l quarter-sections have been compelled or allowed to enter jointly?

The instructions under the pre-emption laws require and direct, that "when improvements are situate on a fractional containing less than the quantity of a quarter-section, such fraction must be taken in lieu of an entire quarter-section."

What I wish to ascertain is, whether every settler or claimant under the pre-emption laws, who has complied with the provisions of those laws, has not been allowed to have something.

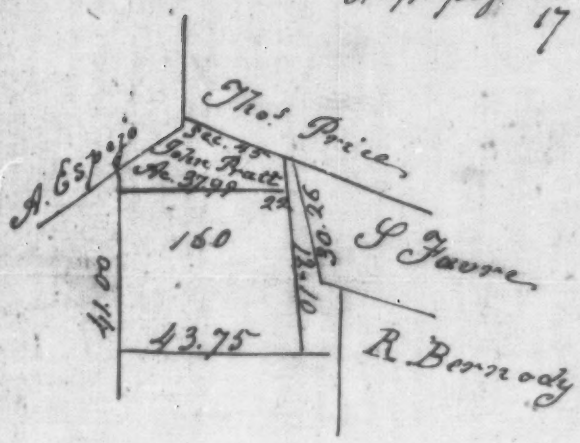
Or whether any single one has not been entirely cut off from taking anything when there was no other settler or claimant on the same quarter or fractional quarter-section.

I wish to lay the reply to this letter before the Sec'y of the Treasury, in the case of Etheridge and others, claimants of sec. 22, t. 4, r. 1 w., in the St. Stephen's district.

As the inquiry embraces but a single point or fact, I must beg that you will, if convenient, reply to it by to-morrow morning, at which time I wish to bring the case in question before the Hon. Sec'y for decision.

Very respectfully, your ob't serv't,
CHAS. E. SHERMAN.

No 71. page 17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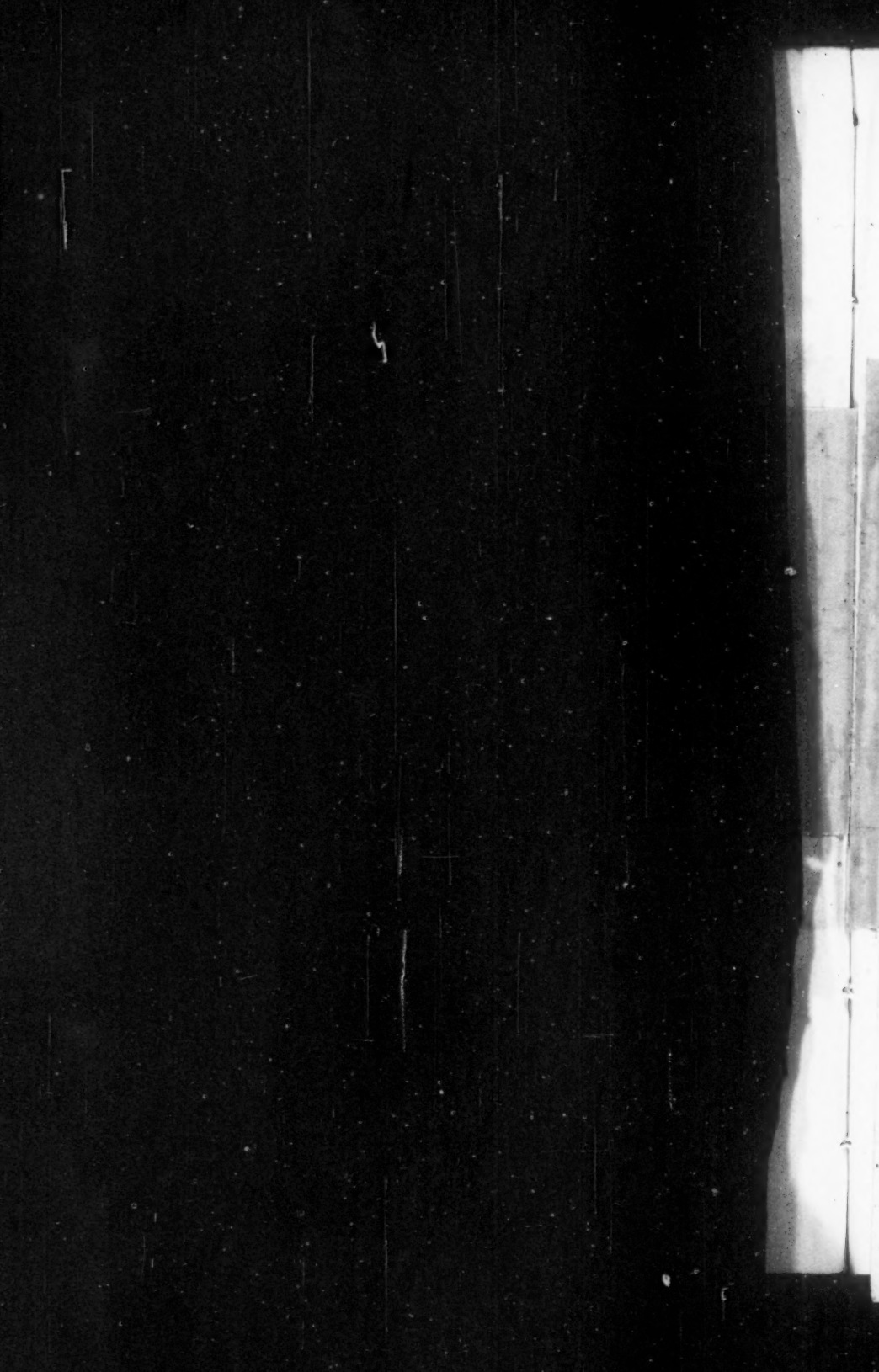

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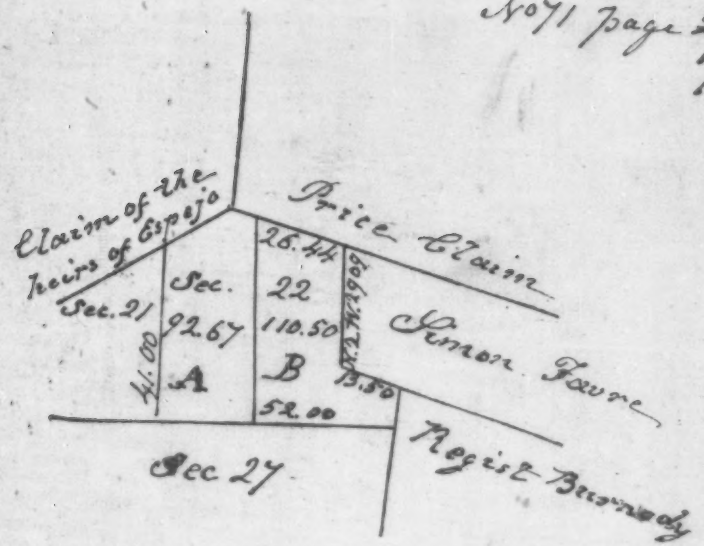

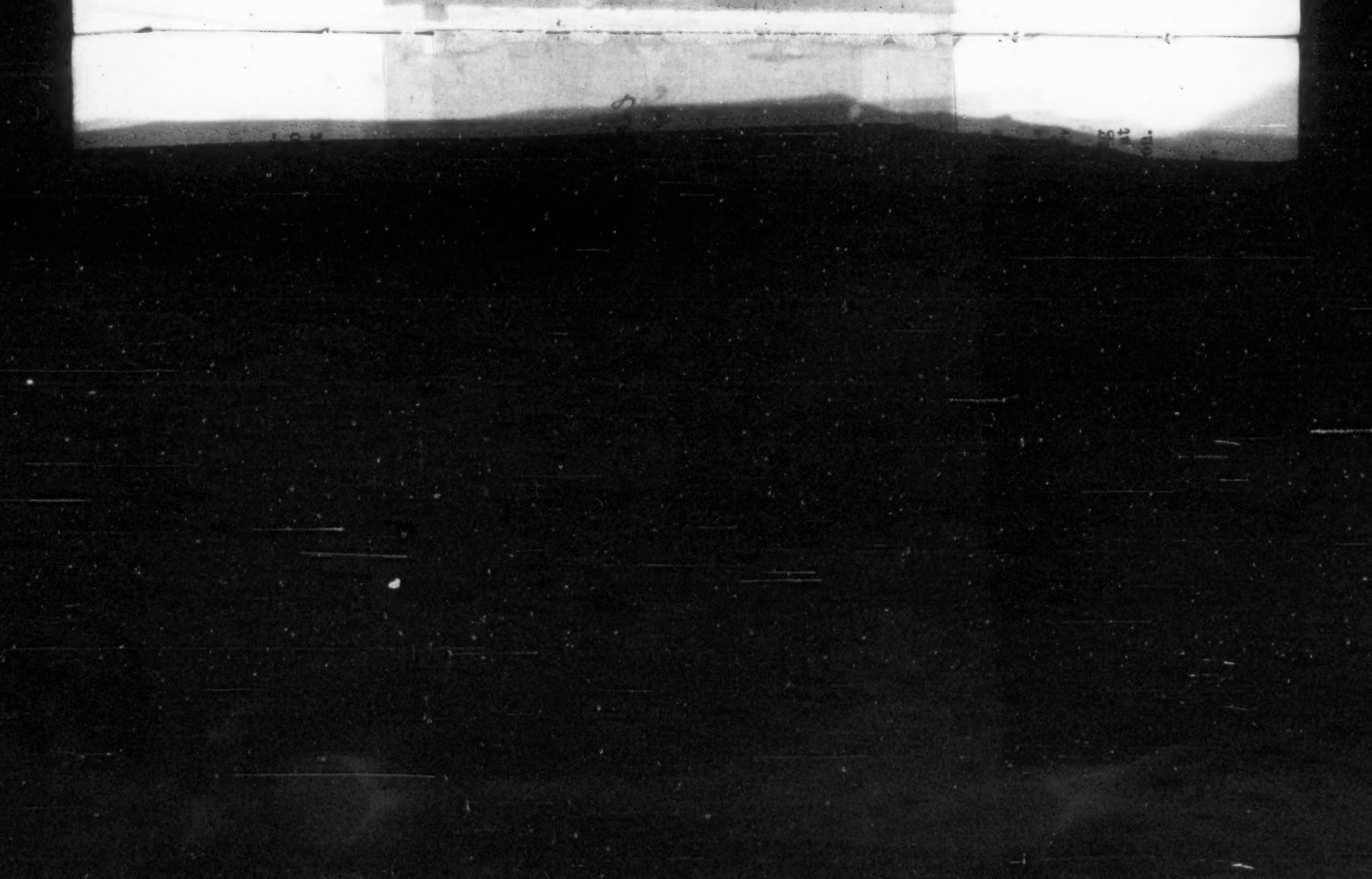

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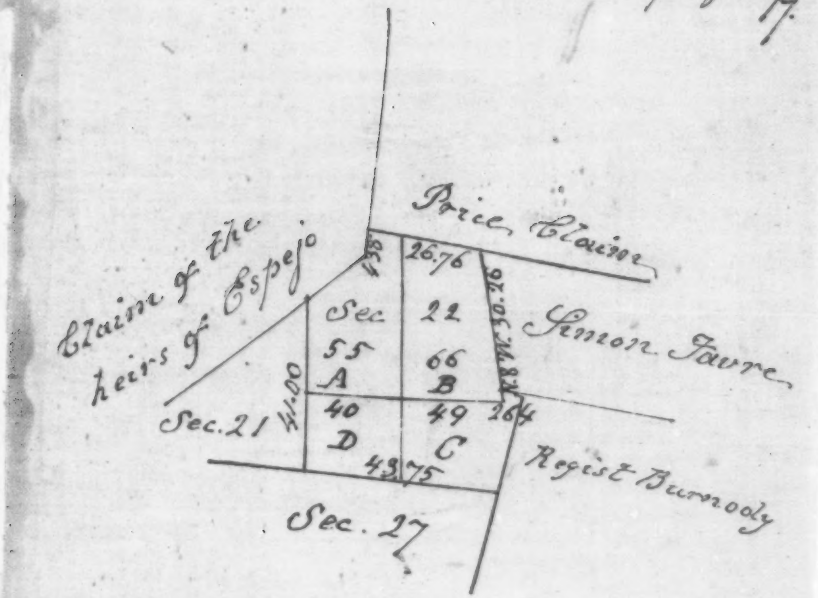

P. S. I will also thank you to inform me whether new subdivisions, not returned on or shown by the approved township maps, or received from the surveyor gen'l, have not been directed to enable a pre-emption to enter such new subdivisions under the pre-emption law.

GENERAL LAND OFFICE,
April 15th, 1837.

SIR: I have received your letter of yesterday propounding sundry inquiries as to official practice in relation to subdivisions of fractional sections, and having reference to the case, Etheridge and Stone. Inasmuch as that case is before the Secretary of the Treasury, to whom a very full communication has recently been made in reply to sundry interrogations which he was pleased to propound, I deem it the only proper course in the present position of the business to decline making any communications on the same subject, unless on a call from the Sec'y, to whom you are referred.

I am, very respectfully, sir, your ob't serv't,

JAS. WHITECOMB,
Commissioner.

CHAS. E. SHERMAN, esq.

Present.

[For diagram, see page 22.]

Diagram of frac'l sec. 22, 4 s., 1 w., St. Stephen's land district, taken from the plat of survey, approved 29 June, 1835.

[For diagram, see page 22.]

Diagram from the plat of town. 4 s., r. 1 w., St. Stephen's land district, approved 12th March, 1832.

[For diagram, see page 23.]

Diagram of frac'l section 22, t. 4., s. r. 1 w., St. Stephen's land dist., taken from the plat of survey, approved 30 September, 1845.

WASHINGTON,
Tuesday, May 9th, 1837.

Hon. LEVI WOODBURY,
Sec't'y of the Treasury.

SIR: I herewith enclose a reply to the communication of the Commissioner of the General Land Office, dated 6th May, 1837, enclosing the extract of a letter by Comm'r Graham to the register of the land office at Cincinnati, Ohio.

I also send a copy of the letter, to which the extract furnished

by the commissioner is a reply, and from which it will be seen the extract in question fully sustains the views of this case which I have taken.

I have also turned my attention, as you were kind enough to advise, to the question "whether resurveys or further and new surveys have been allowed after patents had issued," and the result has been that such resurveys are allowed; and that every word and syllable in the communication of Mr. Stiger, the draftsman, of the 6th inst., is erroneous, as you will remember I predicted it would be, if deemed necessary to support the decision made, which decision is the joint offspring of Mr. Stiger and Mr. Burchard, who are also entitled, either jointly or severally, to the paternity of the decision appealed from; and also of all the extraordinary circumstances that have been sent to you in support of the decision made.

I have only examined the Mobile township, and I find that out of twenty-six tracts of land which have been patented, (to pre-emptions, too,) every one has, since the patent issued, been resurveyed, and that the boundaries of almost all of them have been altered; some have been made larger and some smaller than they were patented, and in some instances, when they were patented differently from the subdivisions on the map, they have been surveyed to conform to the patents. This is just what is asked in this case, viz: A survey like those mentioned to conform to the patents which have been issued, not to contradict or vary them, but to conform to them. The patents have issued, in the case in question, according to the subdivisions which the surveying laws and the pre-emption laws both require, and according to the claims and proof, and the allowance of the claims of the respective parties, (i. e., Stone and Etheridge;) but the subdivision made is not according to law, and therefore, by the subdivisions made, the parties cannot take what has respectively been patented to them. The land has been patented differently from what it has been surveyed; the patenting is according to law, and the surveying or subdivision is differently from the patent actually issued and against the law. This certainly is but reasonable and just. The subdivisions clearly ought to conform to the patents, if the latter are legally issued, which is not denied.

This is not violating the boundaries fixed by the patents, but establishing them.

In order to show the resurveys of patented tracts of land, as above stated, I respectfully request that your excellency will send for vol. 92 of the Book of Surveys in the Gen'l Land Office, and also the record books showing what patents have been issued in the Mobile township, and that I may be permitted to point out the resurveys above stated. I enclose my pencil notes, which show the tracts and the alterations made by the resurveys, since the patenting, as a guide.

Thus it appears, that though Mr. Stiger at this time recollects

no examples of the survey or resurvey of pre-emption claims after the patents had emanated, "that the very townships in which the lands in question lies contains largely more than 20 examples of such resurvey." Indeed the very tract in question has been resurveyed since the patents issued, but owing to the original error in the subdivision line, made by the surveyor, did not know the true quantity of the tract; such resurvey is (still) inaccurate.

It would seem, that with these precedents of resurvey after patents have issued, going in many instances to vary the size of the tract so as to make it conform truly to the legal description of the tract patented, though the area or number of acres was altered, there can be no well-founded objection to grant the relief prayed, and that the land office acted under an error as to the practice of resurveys after patents issued.

In regard to the question whether Stone should have notice, I refer your excellency to the paper already filed on that subject, and if the reasons there presented are not deemed conclusive on that point, I beg leave to obtain precedents to support the facts there stated.

Your excellency seems to have been laboring under a mistake as to the magnitude of the interest involved on Stone's part. The truth is, the interest of Stone has never existed to more than he claimed and was allowed under the pre-emption law, and all that will be given him by the subdivision proposed. By the illegal subdivision which now appears on the map, Stone has some colourable right, (but no real one,) to hold more than he claimed or was allowed under the pre-emption law, because of the neglect of the surveyor to divide according to law; and Etheridge cannot take what the pre-emption law gave him, and what he claimed and was alowed, and what was patented to him; and there is great danger that if he attempts to assert his right in a court of justice, that the illegal division of this tract will be set up against him as being contained on the official township maps. But I repeat again what I suggested yesterday in my hasty note, that if the patent prevents a resurvey, though the line is illegal, let it be decided, but precedents show the contrary beyond doubt.

☞ The course suggested by Mr. Young obviates every difficulty as to notice to Stone, and corresponds with the usage of the land office, viz: To make the decision and direct the register to give all parties interested notice before the resurvey, and if any good reason is shown, to report the same to the Gen'l Land Office for its consideration.

The course I proposed myself was, to decide whether the line was legal or not, but to suspend a resurvey, as between Stone and Etheridge, until after the action of a court of justice, into which Etheridge cannot safely enter 'till such decision. The decision prayed for cannot affect Stone's rights, because Etheridge must, after the decision here shall be had, go into a court and must there establish

his rights. But Etheridge will be most seriously affected if the decision is refused, because the illegal line may operate as a bar to a fair legal investigation in the court, from which Stone can have no right to deprive him.

But argument on a point so plain seems useless and nugatory, and I cannot believe that, with so many precedents of resurvey, (and that without notice to any one,) and with so much plain, sound reason and justice, in support of some mode of relief against so palpable an error of a public officer, that mere trifling, incidental questions will be seized and made use of to cut off all relief whatever, and, after three months' vigilant application, and much unjust and unusual opposition has been thrown in his way, the applicant dismissed on the question of notice, (a question not involved below or in the appeal,) and that, too, against the uniform usage of the government.

The only question involved is one of sheer law, and, I repeat, such questions must always be decided, so far as the action of the government is concerned, upon the advice of their own law officers.

With a hope that I may be permitted to explain the resurveys on the original maps, mentioned in my pencil notes, and the condition of this tract, which the diagrams do not fully represent, and which can only be done intelligibly and satisfactorily with the map before me,

I am, very respectfully, your ob't serv't,

CHAS. E. SHERMAN,

For Etheridge, &c.

NOTE.—The map in question will be wanted but a few minutes, as also the book showing the patents issued in Mobile township.

Reply of Mr. Sherman to the communication from the Comm'r of the Land Office of the 6th May, 1837.

In the letter addressed to the Hon. Sec'y of the Treasury, enclosing the extract from a letter from Mr. Graham "to the register of the land office at Cincinnati, Ohio," the present Commissioner says the same (the extract) is deemed applicable to the case of Etheridge & Stone, wherefore he communicates it.

Now it is certainly applicable to that case, but if to sustain the decision made by the Commissioner, it is the first thing of the kind which has been communicated among all the voluminous anomalies and labored yet impotent vindications of an erroneous decision which have reached the treasury since the appeal (on one single question only) was taken. The Commissioner also says in the same letter that this "extract" is forwarded "as explanatory of the diagrams heretofore communicated at your (the Hon. Sec'y's) request."

Now, what illustration those anomalous diagrams were to receive

from this "extract," as understood by those who induced the Commissioner to send it, I must confess I cannot perceive; and I am forced to consider this sentence a mere unmeaning pretext to place before the Hon. Sec'y something that they supposed would tend to divert his attention from the only question involved in this case, and thus go to sustain a decision the ghost of which haunted them.

But to this "extract" and its intended influence on this poor case it will only be necessary to apply, as a sure antidote, a little "double extract" furnished by the same correspondence, which I have taken the benevolent precaution to prepare, and now beg leave to administer.

The register at Cincinnati, by letter dated 12th May, 1829, says to the Commissioner of the General Land Office: "Having felt some hesitation on the subject, I have thought it safest to ask whether the surveyor general's subdivision of relinquished fractions into 40 or 50-acre tracts (in some cases almost indispensable) is considered as sufficient authority for the register in suffering less than the established minimum of 80 acres to be entered at a time."

To this inquiry the Commissioner, under date of the 23d May, 1829, replies:

"You are justified in adhering strictly to the subdivisions of fractional sections reported to you by the surveyor general, although such subdivisions may be less than the quantity of a half quarter section.

The act of 24th April, 1820, authorizes the subdivision of fractional sections containing 160 acres and upwards into half quarter sections, as nearly as practicable, under such rules *rules* and regulations as may be prescribed by the Secretary of the Treasury.

The Secretary of the Treasury has authorized the surveyor to make the subdivision either by north and south or by east and west lines, so as to preserve the most compact and convenient forms. This is the only regulation on the subject; and in acting under it the surveyor gen'l should make the subdivisions into 80 acre lots. as nearly as can be done, and when the surveyor has failed so to do, in the exercise of his discretion, there is now no remedy."

Now, if this interrogatory by the register and the answer to it does not fully sustain every ground I have taken as to the subdivision of fractional sections containing over 160 acres, then I have not the intelligence to understand plain language.

The direction of the Commissioner accords with the plain provisions of the law of 1820, and with the interpretation which I have given to the instructions of the Secretary of the Treasury, intended to carry it into effect—vide the 1st sec. of that act, and the instructions on file with the papers.

The law of 1820 declared that all the public land of the U. S. should be divided into and sold in half quarter sections, and that the lines of division should run north and south, and that frac'l sections containing 160 acres or upwards should in like manner, as far

as was practicable, be divided into half quarter sections, and the mode of dividing them was to be pointed out by the Sec'y of the Treasury. He pointed out the mode, and authorized the surveyor to divide them into half quarters, either by a north and south or east and west line, leaving it to his discretion to run either course. so as to leave the most convenient and compact forms to the remainders which would be left after getting out all the half quarters he could. The only thing left to the discretion of the surveyor was to divide such fractional sections into half quarters, either by a N. and S. or E. and W. line; and when he had so divided them by either line, and thus exercised this discretion, the subdivision was legal, even though the remnant or remainder was less than 80 acres. This is just what the law requires, and the principle for which I have contended uniformly.

It is left to the discretion of the surveyor to run either a N. and S. or E. and W. line, and this is the discretion to the exercise of which there is "no remedy." But if he should fail totally so to divide these fractions, by either a N. and S. or E. and W. line, there certainly can be no doubt a remedy would exist. As this is not left to his discretion, but is fixed by positive law, any other construction would be forced and unreasonable, and would overthrow the law. It would go to place in the discretion of the surveyor what belonged to the discretion of the legislature, (Congress,) and to substitute the discretion of a surveyor for positive law, and, what is more to be deprecated, would go to make that discretion arbitrary, by placing it beyond the control of this department, while even the discretion vested in judicial tribunals is a legal discretion, and is to be legally exercised, and which not so exercised may be corrected by appropriate tribunals.

It must be borne in mind, that as the law stood when this letter was written, fractional sections containing less than 160 acres (or a quarter section) were not to be divided. ☞ Now, how in the name of reason could 40 or 50-acre tracts be made out of such fractions on the principle of subdivision contended for by the land office? The thing is impossible. If the rule of division is arbitrary with the surveyor, he never would or could have tracts of this size. If the tract or fraction did not contain at least two 80-acre tracts, i. e. 160 acres, it was not to be divided. There would be no necessity or propriety, upon the principle of Mr. Birchard, of even leaving a 40 or 50-acre tract, and yet the register says such small tracts are "in some cases almost indispensable."

The plain, irresistible truth is, the only way such tracts could be made out of fractions of more than 160 acres is to divide them into quarter and half quarter sections, "as nearly as it can be done," as both the law and the instructions positively require, by a N. and S. or E. and W. line, and then you will have remainders of this size. The facts that such tracts were necessary to be made, and legal when made, proves conclusively that, in the opinion of the

former Commissioner, fractional sections containing over 160 acres were to be divided into quarters and fractional quarter sections, and those again into half quarter sections, and the remainder (after getting out as many of the minor legal subdivisions as practicable) into 80 acre lots, as nearly as could be done. In making these latter lots, (in contradistinction of legal subdivisions) the discretion of the surveyor was to be exercised, so far as they depended upon either an east and west or north and south line. Upon the principle of Mr. Burchard, such fractions (over 160 acres) would be divided "into two parts," as in the case under consideration, and no 40 or 50 acre tracts would be made.

The only question involved in the inquiry of the register at Cincinnati was, whether he was authorized under the law to permit the entry of less than 80 acres.

The law said that all the public lands should be offered for sale in half quarter sections, i. e. 80-acre tracts, and the register was in doubt whether he was authorized to sell in smaller ones. The Commissioner replied that he might sell in smaller tracts when they were left by the subdivision of fractional sections of over 160 acres, and that there was no remedy for such cases. The remedy of Professor Berchard had not then been discovered.

Why this question and this reply were thought in any manner applicable to the case under consideration, I cannot perceive. I must do the gentlemen the justice to believe that they had not looked at the inquiry when they communicated the answer, and consequently did not know that the paper furnished conclusive evidence, as far as it went, of the error of the decision it was invoked to sustain. Had they known this, I must also do them the justice to say, I believe it would not have been sent.

☞ I have filed with the letter of the Commissioner a copy of, or extract from, the letter to which that communicated by the Commissioner is a reply, duly certified.

CHAS. E. SHERMAN.

TREASURY DEPARTMENT,
3d June, 1837.

SIR: In compliance with your wish, expressed yesterday in the case of Etheridge, that this department would decide, before you closed your argument on the merits of your application, whether Mr. Stone should have notice to be heard, the following communication is made to you.

It is the opinion of this department, that, before hearing any petitioner fully on the merits, in a case brought by him before the Land Office, and thence, by appeal, here, it is not necessary to give a formal notice to others, because generally no rights or interests are affected by a decision here, except those of the petitioner and the government; and if others should suppose their property in danger by the decision, they in most cases get informal

notice of the pendency of the proceedings, and voluntarily appear, or write to the department.

But during the examination of such a case on the merits, after the argument by the applicant has terminated, if the department should find that the rights or interests of other persons were likely to be unfavorably effected by its decision, and they had not been heard, or to appearance had not been aware of the pendency of those proceedings, it might, in the exercise of a sound discretion, deem it proper, before making a final decision in the case, to notify such persons of the pendency of the proceedings; undoubtedly it always would do this, when the amount in controversy was large, and the notice could conveniently be given, provided the pressure of business or some other cause did not prevent attention to the obvious propriety and usefulness of such a course.

Nor would it be material, as you suppose in argument, whether the point in controversy was one of fact or law, because essential aid might thus be obtained in forming a correct opinion on either, and all appearance as well as likelihood of injustice from hearing only one side be obviated.

You can, therefore, proceed and offer any further remarks you may wish to make on the merits of the application by Mr. Etheridge at the earliest day convenient to you, in order that the department may then commence the examination of the case, and dispose of it soon as practicable, consistent with the nature and importance of the questions which it may be found proper and necessary to decide.

Respectfully, yours,

LEVI WOODBURY,
Secretary of the Treasury.

CHAS. E. SHERMAN, Esq.,
Counsel for Mr. Etheridge,
Washington City.

WASHINGTON, 10*th June*, 1837.

The Hon. LEVI WOODBURY,
Secretary of the Treasury.

SIR: I on yesterday filed in the Etheridge case two records, which go to show that Mr. A. H. Gazzam, of Mobile, had notice of the claim to a pre-emption on sec. 22, in Mobile township, made by John Pratt, (or Jas. H. Young;) and you will remember, and by an inspection of the records in Etheridge's case, you will see, that the case of Pratt is the one in which the petition for a resurvey of sec. 22 was made, upon which petition the case was referred to the Gen'l Land Office for its advice, and in which Etheridge joined by making an affidavit in support of the same. Upon this petition and reference, all the parties interested in the legal division of sec. 22 but Gazzam have appeared, and he has, as the records referred to show, had notice of the claim in which the petition for a resurvey was made, and was therefore bound to take notice of the progress

and proceedings of the case. The records also show that the pre-emption claim of Pratt could not be allowed to the northwest quarter of sec. 22, without a resurvey, because, by the maps as returned, there is no such division without a resurvey. Gazzam was, for this reason, bound to take notice of the proceedings in a case of which it fully appears he had notice.

I now enclose a letter and statement from Joshua Kennedy, esq., of Mobile, to show that Gazzam is an under-purchaser of Stone's pre-emption.

I refer your excellency to the President for Mr. Kennedy's respectability. But, if necessary, I can procure his affidavit of the facts stated in his letter, to show that Gazzam is an under-purchaser of Stone's pre-emption. I felt some delicacy in asking this, unless required by you. It seems to me, then, that so far as it can, upon any principle laid down in your communication, be required, Gazzam (Stone's vender) has had notice; certainly all the notice required between the northern settlers and the southern ones, upon the section in question.

But I beg your excellency to bear in mind, that, upon looking to the claims of the respective parties, there is in fact no conflict between them. Stone and Etheridge claim different tracts or divisions of land; and the northern claimants claim different lands and divisions from those claimed either by Stone or Etheridge. This is a fact which, if not disregarded, must be conclusive; and to declare a conflict, when the record shows there is none, and hence to infer a necessity notice, would seem to be a strange mockery, both of reason and justice. I cannot make this point any plainer.

I also wish your excellency to remember that as between Stone and Etheridge no action is asked, but only a decision on the only question presented to the Land Office, viz: is the line of subdivision legal? This certainly can be done without detriment to any one's rights; and then, if the issuance of the patents prevents a correction of the error, or a new survey, let it be so decided, and let the parties go to the courts, which they can then do perhaps. It seems to me unaccountably strange, that so simple and cautious a course should meet with objection.

This course cannot, as I have fully shown, affect Stone's rights, or the rights of his assignees, but will only remove an illegal bar to Etheridge's proceedings in the courts.

To the northern claimants, it will be remembered, no patents have issued, and they are all represented; and the Land Office has not holden the line legal as to them. It seems to me but common justice that the line (the ½-mile line required by law) should be run between Etheridge and Stone and them; with this I will, for the present, be satisfied, until a decision of the courts between Stone and Etheridge, provided your excellency is determined not to decide the question involved in the appeal as to the legality of the line.

If the parties are deprived of the land given them by the pre-

emption law, and duly claimed and allowed, then Congress must indemnify them for the violation of their rights.

If this Department will give Stone more than he claimed, and what he never claimed, and what the law gave to Etheridge, Congress must pay for it.

I shall be greatly obliged if the report in Brown & Reynold's case be called for to-day, as I desire to leave on Monday.

I enclose your communication of Saturday last, and ask that it may be made a part of the record of this case, of which it clearly forms a part.

I hope your excellency will be able to adopt some course which will avoid oppressive delay and do justice to the parties, though I am compelled to confess that from the impediments which have been unnecessarily thrown in the way of the decision of a single plain question, I have fears that such will not be the case. I have shown a case as plain in its facts and law as it is in its justice, and I submit it without further comment. I added a hasty brief, which I hope will suggest the point involved for decision, and the arguments upon them. The record presents but one point.

With an apology for the great trouble I have been compelled to give you, I am, with due consideration, your very ob't serv't,

CHAS. E. SHERMAN.

Hon. L. WOODBURY,
Sec'y of the Treasury.

GENERAL LAND OFFICE,
June 14th, 1837.

SIR: I have the honor to enclose herewith a communication from Chas. E. Sherman, esq'r, dated the 17th March, 1836, (1837,) in reference to the case of James Etheridge. This letter should have accompanied the papers which have been transmitted to you from this office in relation to the said case.

With great respect, your obedient servant,

JAMES WHITCOMB,
Commissioner.

The Honorable LEVI WOODBURY,
Secretary of the Treasury.

WASHINGTON CITY,
17*th March*, 1836.

SIR: The case of Jas. Etheridge has been submitted to the Solicitor, Mr. Burchard, and by him decided against the right set up by Etheridge. As the case is deemed a plain one, I have to request that before that opinion be sanctioned by you, you will review the facts and arguments in the case; and if it be not an unusual indulgence, that I may be permitted to explain the case to you. The case is deemed one of the very strongest and plainest, both at law and equity, and, as the case has been decided by the solicitor,

one of most oppressive hardship; and as he is merely an advisory officer of the Commissioner, authorized by law "to examine and present a report," (not decision) "to the Commissioner of the state of facts in all cases referred by the Commissioner to his attention," &c., I have supposed the favor would be accorded as a matter of indulgence, if not of right.

The interests of a poor man are involved vitally; and feeling no doubt that the right claimed by him ought to be allowed, I trust I shall be excused for asking that the case may be reviewed before your concurrence in the opinion given by the Solicitor is approved.

An hour after the close of the office hours would be sufficient to review this case, and if allowed will greatly oblige your very ob't serv't,

CHA. E. SHERMAN.

Hon. JAMES WHITCOMB,
Comm'r &c., &c.

TREASURY DEPARTMENT,
25th September, 1837.

SIR: The opinion of the Attorney General in the case of the Etheridge claim appearing to sustain the views taken by you, I have to request that the case may be disposed of accordingly, unless an appeal be taken to the President.

I am, respectfully, sir, your ob't s't,

LEVI WOODBURY,
Secretary of the Treasury.

Commissioner of the General Land Office.

JAMES ETHERIDGE and WM. D. STONE.

SOLICITOR'S BUREAU,
March 18th, 1857.

SIR: Under circular 7th February, 1831, Mr. Etheridge proved his pre-emption to s. w. ¼ No. 22, t. 4, r. 1 w. Stone also proved similar claim to the fr. in w. part s. e. qr., same section. No. 22 was surveyed after the allowance of these claims, and the surveyor general divided the tract by running a line from the qr. ¼-section posts due north, thus making two of the best and most compact forms possible. After the plat was returned, each party paid and took a certificate, on which patents have issued. Etheridge has the s. w. ¼, with the area of west subdivision; Stone the residue, being a tract greater than was specified in his original claim. The material question arising is, Was this subdivision authorized by law? I am of opinion it was. No. 22 was made fractional by private claims; being over 160 acres, it had to be divided, and in doing this the surveyor general run a line north from the qr. ¼-section

post, making the tracts as near a regular form as was practicable. The proof of pre-emptions seemed not to have controlled him; nor am I sure that it should, as the present lines give to each party his improvement in legal subdivisions, and their subsequent certificates have been issued for the area contained in each. Had Ethridge's claim been allowed to control the survey, and a quarter given to him, two small angular and inconvenient fractions would have been left. I am of opinion each party can hold the tract conveyed to him, and therefore advise against further agitating the subject.

I am, very respectfully,

M. BIRCHARD,
Solicitor.

To JAMES WHITECOMB,
Commissioner.

JAMES ETHERIDGE and WM. D. STONE, 2d report

SOLICITOR'S BUREAU,
May 11th, 1837.

SIR: I herewith return Mr. Sherman's two letters, and the memorandum and arguments, in relation to the case of Stone and Etheridge, which were this day referred to me for a report, in the absence of Mr. Stiger. As to the statements of Mr. Sherman that numerous resurveys are allowed, and that every word and syllable in the communication of Mr. Stiger, the draughtsman, ("principal clerk of the surveys,") of the 16th instant, is erroneous, I I have the honor to report—

That the general rule stated by Mr. Stiger is believed to be correct, if understood as he evidently intended, and that if the books of the offices show cases in conflict with that statement, (and I have no knowledge of any such, nor have the oldest clerks of this office,) they are cases that inadvertently have occurred, or at least have been passed over without due consideration. I have examined the lists in pencil which accompanied Mr. Sherman's letter.

Abstract A, prepared by Mr. Fitzhugh, shows the sales referred to by Mr. Sherman, the date when made, and the date of the patents that have issued, and in every instance they have been patented according to the maps by which the sales were made. The land granted in the patents is identical with the old plat.

Mr. Sherman gives 10 examples from one township.

1st. "Section 7 has been divided into four lots since the patent issued, and 2 of them marked A and B: vide the 2 maps."

2nd. "Section 27 has been differently subdivided since the patent issued in 1833."

3rd. "Fr'l sec. 15 ditto, since patent issued in 1832, area on maps 1832 and in patent, 41–80; on map of 1835, by resurvey, 38 acres."

4th. "Fr'l sec. 14 has been resurveyed since patent issued in Sep., 1832, and on maps and in patent of 1832, 52 65-100 acres; on maps of resurvey, 10."

5th. "Sec. 28 has been newly and differently subdivided since patents issued in May, 1832, vide S. W. ¼ of this section, patented different from map of 1832, but by legal tracts, and resurveys since patent in 1835 to suit, agree with patent."

6th. "Fr'l sec. 17 has the ½ mile run on the last survey and maps not run at time patent issued, in 1832. Area same on both maps as in S. W. ¼ 28."

7th. "Fr'l sec. 35 ditto, after patent in 1832. Area of patent and maps of 1832, 28 60-100; area of 1835, 30 acres."

8. "Sec. 34 ditto. Area altered from 62 40 to 35 25-000; patent issued in 1832."

9th. "Fr'l sec. 21 ditto. Area altered from 77 60 to 70; patented in 1832."

10th. "Sec. 22 altered in every line and area."

The sectional lines of the town of Mobile, from which the above 10 illustrations are taken, was surveyed by C. C. Stone in 1820; and, as appears by both maps referred to by Mr. Sherman, the sectional lines have not been resurveyed since. The private claims were surveyed by James Dowell in 1830 and 1831, and were resurveyed in part in January, 1835, by Andrew Henshaw and John James, at which time the surveyor general made the necessary additional subdivision of section, under the act of 5th April, 1832. As regards Mr. Sherman's 1st example, (sec. 7,) the surveyor general does not appear to have been advised of the previous sale, which had been made according to the old plat and subdivision under the act of 1820, and being required by instructions under act of 5th April, 1832, to subdivide into 40-acre tracts all the tracts not previously sold, he subdivided this, but thereby disturbed no old line, and the new subdivisional lines on the new plat are superfluous, and do not affect the title of the purchaser. Such cases are numerous, and the date of the sale has ever been considered a sufficient explanation.

3d example, sec. 15. This is a resurvey of a private claim derived from a foreign government, and confirmed by the United States, by which it has been extended on to the supposed public lands beyond the lines of its location by the prior survey, and not a resurvey of the section lines; and the older and better claim has been allowed. It is a case where a junior purchaser must yield to a better title, and his redress would be a repayment of the purchase-money.

Example 2, sec. 27, } are like example 1, sec. 27.
" 5, sec. 28, }

Example 4, sec. 14, } are like example 3, sec. 15.
" 7, sec. 33, }

All the difference is, that, as to sec. 35, the U. S. gain 1 36-100 acres of land, instead of losing by the private claim.

Example 6, sec. 17, is like sec. 7, example 1, with this variation only: under act of 1820 this fr'l section was not divisible. The half-mile post was marked, and under act of 1832 it would have been divisible had it remained unsold; as it was sold, the subdivision was unnecessary, but has not altered any former boundary of the tract.

Example 9, sec. 21, is like the examples 1 and 3 united. The private claim makes a reduction in quantity, and unnecessary lines were marked across the plat, denoting subdivisions under act of 1832. The patent issued agreeably to the plat used at the sale.

Example 10, sec. 22, is like examples 1 and 3 united. The boundaries of this section "are" not "all altered," as stated. The regular section and subdivision lines and corners, as marked on the old map, remain the same on the new map; and the alterations are, an addition to the length of the old subdivision line, and to the south boundary line, in consequence of the contraction of the contiguous private claim, all which will appear by inspection of the maps.

The making of small legal subdivisions under act of 1832, which were not required by act of 1820, is not what Mr. Stiger called a resurvey. It is not often that any survey is necessary to enable the surveyor general to mark the subdivisions under act of 1832; such lines are not run or marked in the field, they are, (except in special cases,) merely marked on the plat from the original field notes. Mr. Sherman appears unable to take a distinction between a resurvey of a Spanish claim and the resurvey of a township of public land, and it is not impossible but that a want of perception is the cause of many of his blind and rash statements.

Mr. Stiger's letter of the 6th was written in haste, while the messenger of the Treasury Department was in waiting; he had no time to go into a detailed statement of all the minute instructions given to the surveyor general, and only intended to give the general rule of the office as applicable to the question asked, which was, whether resurveys of pre-emption cases were ever allowed after patents had issued? He said he had no recollection of such a case. That townships containing many private claims are frequently resurveyed, and that the surveyors in such cases were instructed to respect the former survey and not to interfere with the patented claims, clearly speaking of claims derived from this government, and intended to communicate that they were not to be broken up or affected by a resurvey after sale; such was the inquiry put to him that it would seem that he could have meant nothing else.

Confirmed Spanish grants are older and better titles than pre-emptions; and on the theory that the U. S. can have granted

nothing which they never owned, the survey or resurvey of private claims often interferes with sectional lines of supposed public lands; and whether sold or not, the title from the foreign government makes the junior supposed but unreal title yield to its correct location, and this office and the courts hold such junior title totally void as against the Spanish claim. This rule has always been adopted as to the resurvey of private claims. When the entire township is directed to be resurveyed, it is always done with instructions to respect former sales, as stated by Mr. Steiger. I have read the instructions to the surveyors general, and know that this has been a rule since the days of Albert Gallatin.

In preparing the various instructions and decisions of the office for publication, I have found numerous letters in accordance with the general rule, as stated by Mr. Steiger, and not one to the contrary. And I believe that a rigid examination of the books of the office will only show that, as I have explained it, his statement is correct in all its particulars.

I herewith send you the report of the committee on public lands, No. 284, "Petition of Green Pryor." The bill reported became a law. I have marked the margin of the report to show the views of Congress as to our powers of resurvey after patent. Also, two letters of Mr. Hayward, dated May 31 and June 15, 1831, (transcribed for publication,) showing his views of our right over old surveys, and also his construction of the act of 1830, and that it was, in his opinion, the duty of register and receiver to require pre-emptors to make their entries in conformity to the subdivisions reported by the surveyor general, and that he so instructed them.

I am, very respectfully, your most ob't serv't,

M. BIRCHARD, *Solicitor.*

To JAMES WHITECOMB, esq.,
Commissioner.

SOLICITOR'S BUREAU,
October 30th, 1837.

SIR: In the case referred to this office by the Secretary of the Treasury, requesting information as to the title of a tract covered by the Espejo claim, and a part of the tract supposed to be covered by the patent of James Etheridge—

I reported that, from the appearance of the plats, there was a portion of section 22, township 4, range 1 west, of the St. Stephen's land district, that was not covered by Etheridge's patent, but was public land. The same remark would apply to a strip lying east and north of the claim of Wm. D. Stone.

In the same report I expressed the opinion that the claims of Carman Frazier and Phebe Pollard could not take such land, provided my opinion in the Price case should be confirmed, which was then pending before the Secretary of the Treasury, and has since been confirmed. (See my report, No. 101.)

At the time of the sale to Stone and Etheridge, they took all of the above section, except what was then located and surveyed to the Bernoncly, Favre, Price, and Espejo claims.

It is by a resurvey and contraction of those claims, and an alteration of some of those lines since sale to Stone and Etheridge, that any vacant public land has been found. As these claims covered the land at the date of the pre-emption acts of 1830 and 1834, and as the pre-emption acts did not authorize the sale of any lands reserved by act of Congress, and as an act of Congress expressly reserves all lands from sale to which a Spanish claim had been filed in due time, et cetera, I have to state that this office has heretofore often held that a sale could not be made, under those acts, of lands thus situated.

I am, &c.,

M. BIRCHARD,
Solicitor.

JAS. WHITECOMB, esqr.,
Commissioner, &c.

GENERAL LAND OFFICE,
November 30th, 1850.

I, Justin Butterfield, Commissioner of the General Land Office, do hereby certify that the foregoing fifty pages are truly copied from the files and records of this office.

In testimony whereof, I have hereunto set my name, and caused the seal of the General Land Office to be affixed the day and date last above written.

J. BUTTERFIELD,
Commissioner.

[SEAL.]

Exhibit E.

THE STATE OF ALABAMA,
Mobile County.

Interrogatories to be exhibited to James McGoffin, a material witness for the defendants, in three causes pending in the circuit court of said county, in which John Doe, on the demise of Etheridge and others, is plaintiff, and in one of which James F. Hutchisson is defendant, in another Charles W. Gazzam is defendant, and in the third Wm. Stanton is defendant.

1st. What office do you hold under the United States?

Answer to 1st. interrogatory. I hold the office of register of the land office for the district of St. Stephen's, Alab., duly commissioned and sworn.

2d. Do you know anything of the claim of James Etheridge and Wm. D. Stone for pre-emptions in 1831, for lands in township four, south of range one west; were they preferred at the land office at St. Stephen's?

Answer to 2d interrogatory. I know, from the files and records of this office, that James Etheridge and Wm. D. Stone filed pre-emption claims, under the act of Congress approved 29 May, 1830, for parts of frac'l section 22, township 4 So., R. 1 W., and that their pre-emption claims were admitted by John B. Hazard, acting register, and John H. Owen, acting receiver of this office. (See papers A, and B, and C, and E.)

3d. Will you state if any township and sectional surveys had been returned to the land office at St. Stephen's at that date? Will you state whether there had been any survey on the ground, at that date, of the lands embraced in the claims of the said parties?

Answer to 3d interrogatory. From the records and files of this office, I learn that township plat four south, R. 1 west, was returned to this office, system 16, 1831, but found erroneous and cancelled, and an approved township and range returned corrected, dated 12 March, 1832, and on which all sales of public lands have been made.

That the claim of James Etheridge was filed on the 28th January, 1831, and the claim of Wm. D. Stone filed on the 25th of March, 1831.

The official return on file is, that the sectional lines of T. 4 S., R. 1 W., were surveyed by C. C. Stone, deputy suv'r, in 1820, and the private claims, by James Dowell, in 1830 and 1831.

The records of this office show that the lands embraced in the pre-emption claims of J. Etheridge and Wm. D. Stone, under date of 20th June, 1831, were reported to have been surveyed, (see paper C;) no record showing the precise time the surveys of private claims were made.

4th. Will you state in what manner the lands allotted and patented to the several parties (Etheridge and Stone) were ascertained? Was there or had there been any survey of the sectional subdivisions? What is the meaning of the description in their patents? does it refer to an actual survey previously made and returned, or did it refer to the protractions on a map in the Land Office?

Answer to 4th interrogatory. I know of no other mode by which the tracts, allotted to the pre-emption claims of J. Etheridge and William D. Stone, could be ascertained by the officers of this office than by reference to the township plat returned and approved. The surveyor general having the sole authority for dividing fractional sections in such way as he deemed proper, neither officer, or individual applicant to purchase, could know, before the approved township plats were returned to the Land Office, in what form the fractional sections would be divided. In the township plat of 1831, (cancelled,) and of March, 1832, approved, the fractional sections were divided (see plat) when returned.

The division line of fract'l section 22, and all other division lines, is laid down on the face of the township plat by the surveyor gen-

eral, (that is, of fractional sections,) without any running of the line by the deputy surveyor.

The designation of tracts in the patents refers to the actual run and marked section lines, and the division lines, laid down on the township plats by the surveyor general in the case of fractional sections, and by the officer of the local land offices in full sections.

5th. Please state what land was paid for by the respective parties. And what land did the government officers suppose they sold, and the parties understand they bought?

Was there any other guide for the sales but the maps? or was the land sold according to a survey previously executed? State what had been the invariable rule of the Land Office in subdividing fractional sections, such as the one divided between Etheridge and Stone.

Answer to the 5th interrogatory. From the records of this office it appears that James Etheridge paid for "SW. qr. sec. 22, T. 4 So., R. 1 W.," 92 67-100 acres, and William D. Stone paid for "SE. subn. fr. 22, T. 4 So., R. 1 W.," each on the 30th April, 1832. (See paper D.)

From the records it appears that the officers of this office fully understood that they were selling to James Etheridge the west division of fractional section twenty-two, township four south, range one west, containing ninety-two acres 67-100, and to William D. Stone the east division of the same fractional section, containing one hundred and ten acres and 50-100. The parties must have known what they got when they received from the receiver their duplicate receipts at the time of payment, the tract being designated in them.

There was not any other guide for the officers of the Land Office when Messrs. Etheridge and Stone were paying up for their preemption claims, or to those individuals themselves, than the township plats, returned approved, which it was the duty of the officers to spread before and fully explain to the purchasers, to enable them especially to understand how much money they had to pay into the Land Office, the contents, form of the tract, &c., that they paid for. This office has nothing to do with the division or subdivisions of fractions; invariably they act on the division and subdivisions of the surveyor general.

6th. If you know any fact material to the defendants in either of these cases, please answer fully and at large.

CAMPBELL & CHANDLER, *For Defts.*

Answer to the 6th interrogatory. I know nothing further material to the defendant in the case.

JAMES McGOFFIN, *Register.*

Subscribed and sworn to before me this the ninth day of February, 1851.

E. H. GORDY, *Commissioner.*

THE STATE OF ALABAMA,
Mobile County.

Cross-interrogatories to be exhibited to James McGoffin, a witness for defendants in three cases pending in the circuit court of Mobile county, in which John Doe ex dem. of Etheridge et al. is plaintiff, in one of which James F. Hutchisson is defendant, in another Charles W. Gazzam, and in the third William Stanton is defendant.

1st cross-interrogatory. Who was the register, and who the receiver of the land office at St. Stephen's in 1831, and what clerks did they have, if any? Were you present when Etheridge and Stone preferred their claims for lands in township 4, south of range 1 west? Where did Etheridge pay the money—at St. Stephen's or Mobile? Did or not the register and receiver remove their books to Mobile, and open an office in Mobile prior to the issual of certificates to said Stone and Etheridge for said lands? Were you present in Mobile at that time?

Answer to the 1st cross-interrogatory. In 1831 John B. Hazard was register of the land office at St. Stephen's, Ala., and John H. Owen receiver of public moneys. I am not informed who were clerks in the office. I was not present when Etheridge and Stone filed their pre-emption claims, nor do I know where they paid in the purchase-money of the tracts exhibited on the records as paid for by them. The entries on the records, and payments of land, two days before the payments made by Messrs. Etheridge and Stone, and one day after, would go to show that those gentlemen made payment at St. Stephen's. I have no knowledge of the books and papers being removed to Mobile. I understood from them that they had been in Mobile in the discharge of their duties as commissioners, under the act of Congress, approved 3d March, 1827.

2d Cross-interrogatory. What connection had you with the land office in 1831, or at the time of the transactions mentioned in the 3d direct interrogatory?

Answer to the 2d cross-interrogatory. I had no connection with the land office at St. Stephen's in 1831.

3d cross-interrogatory. Were not the sectional lines surveyed by C. C. Stone, deputy surveyor, in township 4, range 1 west, in 1820? Have you not so certified? Was not that survey returned to the land office before 1831? Had not entries or claims for pre-emptions been made under that survey in said township previous to 1831?

Answer to 3d cross-interrogatory. On the face of the approved township plats of T. 4 So., R. 1 W., is found the following endorsement: "The sectional lines surveyed by C. C. Stone, dep'ty sur., in 1820; the private claims surveyed by James Dowell in 1830 and 1831." On the copies of this township plat furnished by me, I

have certified to this endorsement being correctly copied. This office possesses no record to show when C. C. Stone's survey was returned, but the register and receiver in their record states that it was not in the land office at St. Stephen's in June, 1831. The deputy sur'r never makes any of his returns to the local offices, nor do they appear there until returned by the surveyor general in the form of the township plats. The files exhibit a letter from John Coffee, then surv'r general, 16th Septem., 1831, (copy herewith,) to the register, stating that he sends the township plat of four south, range one west, with others; which plat was found incorrect, and cancelled, (see paper marked G.) Previous to the above there is not any evidence on the files or records of this office, within my knowledge, that shows any exhibit of the surveys by C. C. Stone were in the possession of this office. The first entry of land found in the records of this office, in T. 4 S., R. 1 W., is dated 9th March, 1832. I cannot find any claims to pre-emption, under the act of 1830, filed in this office previous to 1831.

4th cross-interrogatory. By whom was the line drawn from north to south through the southwest quarter section 22, township 4 south, range 1 west *drawn?* Was not said line drawn by some one since C. C. Stone made his survey in 1820? Please to state the first time you ever saw the line upon any map. Was it not during the time that James Dowell was deputy surveyor?

Answer to the 4th cross-interrogatory. The line dividing fractional section 22, T. 14 So., R. 1 W. was drawn by surveyor general, and exhibited on the first and second township plats sent to this office, (as herewith;) this line was drawn since C. C. Stone made his survey. I saw the division line of frac'l section twenty-two on the first township plat, just after its reception by the land officers at St. Stephen's, and also in the map of 1832; the second one received correcting the error in the map of 1831, as the register informed me. James Dowell was deputy surveyor at the time.

By reference to the copy of the original approved map of T. 4 So., R. 1 W., herewith, it will be seen that the surveyor general made a division of all the fractional sections in the township before returning it to the land office at St. Stephen's, and that he had made the same divisions on the map of 1831 that was cancelled. It is one of the duties of the surv'r general to divide all fractional sections, and also to subdivide them.

5th cross-interrogatory. Did you ever trace the lines of any part of southwest quarter section 22 of township 4 south, range 1 west? Were you ever upon said quarter section?

Answer to 5th cross-interrogatory. I never was on the frac'l sec. 22 southwest quarter, or any part of it.

6th cross-interrogatory. How many feet are there in a chain used by United States surveyors? How many chains in length is one side of a square quarter section?

Answer to the 6th cross-interrogatory. There are thirty-three

and sixty-six feet, two-pole and four-pole chains; the side of a quarter section measures forty chains four poles each.

7th cross-interrogatory. Please examine the maps upon which said lands of Stone and Etheridge were first laid down. How many chains does the land marked to Stone extend upon the southwest quarter section 22, township 4, range 1 west?

Answer to the 7th cross-interrogatory. By reference to the township plat herewith it will be seen that the south boundary line of frac. sec. 22 is fifty-two chains. If the surveyor general had made a quarter section in the division of the fractional section, the division allowed to Wm. D. Stone by his return would, it appears, take from off it about twenty chains, or one-quarter of a mile.

8th cross-interrogatory. Has not the United States issued a patent for the northwest quarter section of said township to John Pratt, or his legal representatives?

Answer to the 8th cross-interrogatory. A patent is now on file in this office in favor of John Pratt, or his legal representatives, for "all that portion of frac. sec. 22, T. 4 So., R. 1 W., not embraced in the patents heretofore granted to James Etheridge and Wm. D. Stone," as designated by the return of the surveyor general, dated 4 July, 1843, as section 45, &c.

9th cross-interrogatory. State distinctly how quarter sections are laid off, surveyed, and marked by United States surveyors, and how many and what corners are ascertained by them? Is not the centre of every section an open corner until after the lands are disposed of?

Answer to the ninth cross-interrogatory. Quarter sections are *are* laid off and marked by placing posts and marking bearing trees, central between the section corners, two lines only of the quarter being *being* laid off, and marked or blazed by actual survey. The corners of the quarter sections on the sectional lines only, by the deputy surveyors, being ascertained and marked; the lines in the interior of the section dividing it, termed open lines, are to be marked out by the county surveyors, if the purchasers require it. In fractional sections the surveyor general, in dividing them, appears to be governed by a different rule, not regarding half-a-mile points from the corners. (See frac. sec. 27, 33, and 34, on map herewith.)

10th cross-interrogatory. If you know anything else beneficial for plaintiffs, please state it fully.

DOUGLAS SMITH,
Attorney for Pl'ffs.

Answer to the 10th cross-interrogatory. I know nothing more beneficial to the plaintiffs.

JAMES MAGOFFIN,
Register.

Subscribed and sworn to before me this the ninth day of Feb., 1851.

E. H. GORDY,
Commissioner.

A.—Exhibit referred to in the deposition of James Magoffin.

To the register and receiver of the land office at St. Stephen's:

You will please to take notice that I, James Etheridge, of Mobile county, Alabama, claim the right of pre-emption, under the act of Congress of the 29th of May, 1830, to the S. W. qr. sec. 22, T. 4, R. 1 W.

James Etheridge, being sworn, maketh oath that the above-described tract of land was planted and cultivated by him in the year 1829, and remained in his possession from the year 1829 until after the 29th May, 1830; that the said land was occupied and cultivated by him and in his own right, and not as the tenant of any other person; that the said land was enclosed with his own fence, and that there was no person concerned with him in the occupation and cultivation of the said land, and that the present claim does not interfere with the right of any other person, and that he believes he is entitled to the same under the act of Congress of the 29th May, 1830, and that the said tract is within the corporate limits of the city of Mobile.

J. ETHERIDGE.

Daniel Robertson and John Carr, being sworn, make oath that they are acquainted with the situation of the above-described tract of land; that the said land was cultivated by the said Jas. Etheridge, in the year 1839, and remained in his possession until after the 29th May, 1830, and that they believe the above affidavit of the said Etheridge to be correct and true.

DANIEL ROBERTSON,
JOHN KERR.

Sworn to and subscribed before me this 28th January, 1831.

P. DEANE,
Justice of the Peace.

(Endorsement on the foregoing paper.)

James Etheridge. Pre-emption claim, act 29 May, 1830. City of Mobile. Fees, 1; justice, 75 cts. S. W. qr. 22, 4 1 west.

LAND OFFICE, ST. STEPHEN'S ALA.,
Jan 28, 1851.

I do hereby certify that the annexed and foregoing is a correct copy of the original application of James Etheridge for the benefit

of the pre-emption act of 1830, as the same is found on file in this office.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, [SEAL.]
Register.

B.—Exhibit referred to in the deposition of Jas. Magoffin.

To the register and receiver of the land office of St. Stephen's, Ala.:

You will please take notice that I, William D. Stone, of Mobile county, Alabama, claim the right of pre-emption, under the act of Congress of the 29th May, 1830, to the fraction situated in the west part of the southeast quarter of section No. 22, in township 4, range 1 west and B. WM. D. STONE.

William D. Stone, being sworn, maketh oath that the above-described tract of land was planted and cultivated by him in the year 1829, and remained in his possession from the yesr 1829 until the 29th May, 1830, and that the said land was occupied and cultivated by him in his own right, and not as the tenant of any other person; that the said tract of land was enclosed with his own fence, and that there was no person concerned or interested with him in the occupation and cultivation of said land, and that this present claim does not interfere with the rights of any other person; and further, that the tract described is within the present corporate limits of the city of Mobile.

WM. D. STONE.

Sworn and subscribed before me this 25th March, 1831.

Samuel H. Garrow and James Dowell, being duly sworn, make oath that they are acquainted with the situation of the above-described tract of land; that the said land was cultivated by the said Wm. D. Stone in the year 1829, and remained in his possession until after the 29th May, 1830; and they believe the above affidavit of *the* Wm. D. Stone to be correct and true.

S. H. GARROW,
JAMES DOWELL.

Sworn and subscribed before me the 25th March, 1831.

STATE OF ALABAMA,
City and County of Mobile.

Personally appeared before me, Henry Daggett, a notary public for the State and county aforesaid, duly commissioned and sworn to administer oaths, the within-named Wm. D. Stone, Samuel H. Garrow, and James Dowell, who, being duly sworn, made oath that the foregoing affidavits by them subscribed are in every respect just and true.

In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal this 25th day of March, in the year one thousand eight hundred and thirty-one.

HENRY DAGGETT,
Notary Daggett, [*Public.*]

(The foregoing endorsed:) Pre-emption claim. Wm. D. Stone. SE. 22, 4, 1 W. Act 29th May, 1830.

LAND OFFICE, ST. STEPHEN'S, ALA'BA,
28*th January*, 1851.

I do hereby certify that the annexed and foregoing is a correct copy of the application made to the register and receiver of the land office at St. Stephen's, Ala., for the benefit of the pre-emption act of 1830, by Wm. D. Stone, as the same is found on file in this office.

Witness my hand and private seal, having no seal of office,

JAMES MAGOFFIN, [SEAL.]
Register.

C.—*Exhibit referred to in the deposition of Jas. Magoffin.*

Abstract of claims to pre-emptions to lands that are reported to have been surveyed, but the township plats not furnished this office.

No.	By whom claimed.	Residence.	Part fract. section.	S.	T.	R.	Quantity.	Price.	Amount.	Rem'ks.
2	Jas. Etheridge.	Mobile co.	SW. ¼	22	4	1 W.				
15	Wm. D. Stone.	Mobile co.	Fract. 22 &	27	4	1 W.				
			All lying So. of 32°.							

LAND OFFICE, ST. STEPHEN'S, ALAB.,
20*th June*, 1831.

It is the opinion of the undersigned that the foregoing claimants are each entitled to the right of pre-emption, under the acts of Congress of the 29th May, 1830, to the tract or tracts by them claimed and annex'd to their names respectively in the foregoing abstract.

JOHN B. HAZARD, *Register.*
J. H. OWEN, *Receiver.*

LAND OFFICE, ST. STEPHEN'S, ALAB.,
January 28, 1851.

I do hereby certify that the annexed and foregoing is correctly copied from the book of record of pre-emption claims filed with the register of this office, under the act of 1830 and 1832.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, [SEAL.]
Register.

D.—*Exhibit referred to in the deposition of Jas. Magoffin.*

Account of lands applied for by individuals to the register of the land office at St. Stephen's, Ala., and of moneys entered in payment thereof, from the 1st to 30th April, 1832, inclusive.

Date of sale.	By whom purchased.	Residence.	No. rec'pt.	Tract purchased.	S.	T.	R.	Acres.	Price.	Am't.	Rem'ks.
1832.											
April 30.	Jas. Etheridge.	Mobile co.	4539	SW. qr.	22	4 So.	1 W.	92.67	1.25	115.83	Pre'n So. 31st.
" 30.	Wm. D. Stone.	Mobile co.	4547	SE. subn. fr.	22	4 So.	1 W.	110.50	1.25	133.13	Pre'n So. 31st.

LAND OFFICE, ST. STEPHEN'S, ALAB., *January* 28, 1851.

I do hereby certify that the annexed and foregoing is correctly copied from the book of records of lands sold at this office, and moneys received therefor.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, [SEAL.]
Register.

Exhibit referred to in the deposition of James Magoffin.

Register of certificates of purchase issued at the land office, St. Stephen's, Alab., for lands sold.

Date of certificate.	No. of cert.	Name of purchaser.	Residence.	Tract.	S.	T.	R.	Amount acres.	Rate.	Am't purchase money.	Rem'ks.
1832.											
Ap'l 30.	4539	Jas. Etheridge.	Mobile co.	SW.	22	4 So.	1 W.	92.67	1 25	115.83	Pre'n So. 31st.
" 30.	4547	Wm. D. Stone.	Mobile co.	SE. frac.	22	4 So.	1 W.	110.50	1 25	133.13	Pre'n So. 31st.

LAND OFFICE, ST. STEPHEN'S, ALA.,
January 28, 1851.

I do hereby certify that the annexed and foregoing is a correct copy from the book of record of this office of certificates of purchase issued for lands sold in this office.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, *Register.* [SEAL.]

F.—*Exhibit referred to in the deposition of James Magoffin.*

(Circular.) GENERAL LAND OFFICE,
Feb. 7, 1831.

GENT.: In all cases where individuals residing on public lands which shall have been surveyed prior to 30th May, 1836, are unable to avail themselves of the benefits of the pre-emption law of 9th May, 1830, under the instructions from this office dated 10th June, 1830, by reason of the township plats not having been furnished by the surveyor general to the register of the land office, the parties entitled to the benefit of said act may be permitted to file the proof thereof, under the instructions heretofore given, identifying the tract of land as well as circumstances will admit any time prior to the 30th May next.

You are requested to keep a proper abstract or list of all such cases wherein the proof shall be of a character sufficient to establish to your entire satisfaction the right of the parties respectively to a pre-emption, and transmit a copy thereof to the office after the 29th May next No payments, however, are to be received on account of pre-emption rights duly established in cases where the townships are known to be surveyed; but the plats whereof are not in your office, until you shall receive further instructions. In all cases, however, where the plats shall be filed subsequently to the receiving of such proof, and before the 30th May next, payment may be made, and receipts and certificates of purchase to issue as usual.

I am, very respectfully, gent'n, your obt. servt.,
ELIJAH HAYWOOD, *Commissioner.*

TO REGISTER and RECEIVER
Of the Land Office, St. Stephen's, Alab.

LAND OFFICE, ST. STEPHEN'S, ALA.,
28*th January*, 1851.

I do hereby certify that the annexed and foregoing is a correct copy of the original as found on the files of this office, and that it is under the proper signature of Elijah Haywood, then Commissioner of the Gen'l Land Office.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, [SEAL.]
Register.

No. 11 Page 37

The deposition of James Mc Goffin age 58

Sec. 11
Chordes B/CO
501.75
N 82° 28' W
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Exhibit referred to in the deposition of James Magoffin.

(Void.) Township four south, range 1 west.

[For diagram, see page 57.]

Surveyed under the superintendence of the principal deputy surveyor east of the Pearl river, &c., by C. C. Stone, deputy surveyor public lands.

Private claims by James Dowell, deputy surveyor.

SURVEYOR'S OFFICE, FLORENCE, ALABA.
Sept. 16, 1831.

Copied from the returns made to this office from the principal deputy surveyor's office.

JOHN COFFEE, *Surveyor.*

LAND OFFICE, ST. STEPHEN'S, ALA.,
28*th January*, 1851.

I do hereby certify that the annexed diagram is correctly copied from the plat on file in this office, of township 4 So., R. 1 W., dated Septem. 16, 1831, transmitted by John Coffee, surveyor general, but subsequently cancelled for errors in the designation and position of the claims of John Forbes & Co., &c.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, *Register.*

Exhibit referred to in the deposition of James Magoffin.

Fr'l township four south, range 1 west.

[For diagram, see page 58.]

The section lines surveyed by C. C. Stone, deputy surveyor, in 1820.

The private claims surveyed by James Dowell in 1830 and 1831.

SURVEYOR'S OFFICE, FLORENCE,
12*th March*, 1832.

Examined.
Signed, JOHN COFFEE, *Surveyor.*

G.—*Exhibit referred to in the deposition of James Magoffin.*

SURVEYOR'S OFFICE, FLORENCE,
16*th Sept.*, 1831.

SIR: I send you herewith four township plats, to wit, townships No. 3 and 4, in range 1, and township 3 and 4, in range 2, west;

and also the plat of tract of land which lies part in each of the four townships, and which is represented on each township plat; but it is thought expedient to send you the entire plat to enable you the better to comprehend the plats. Please acknowledge the receipt hereof.

With great respect, your obedient servant,

JNO. COFFEE.

JOHN B. HAZARD, Esq.,
Register, St. Stephen's, Ala.

LAND OFFICE, ST. STEPHEN'S, ALAB'A,
28 *January*, 1851.

I do hereby certify that the annexed and foregoing is a correct copy of the original, as the same is found on file in this office.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN,
Register.

JOHN DOE, on the demise of Etheridge et al.
vs.
ROE, J. F. HUTCHISSON, C. W. GAZZAM, WILLIAM STANTON.

THE STATE OF ALABAMA,
Washington County.

Be it remembered that on this, the third day of Feb'y eighteen hundred and fifty one, I, Elijah H. Gordy, a commissioner appointed to take the testimony of James Magoffin, a witness in the above-entitled cause, I caused the said James Magoffin to come before me, at his residence in the town of St. Stephen's, in the county of Washington, and State of Alabama, and after being duly sworn, made the foregoing answers to the foregoing interrogatories and cross-interrogatories, and furnished from the files of his office the copies of maps and papers as required by the said interrogatories.

Witness my hand and seal, this the ninth day of February, A. D. 1851.

E. H. GORDY, [SEAL.]
Commissioner.

Exhibit F.

[For diagram, see page 59.]

Township four south, range 1 west.

The sectional lines surveyed by C. C. Stone, deputy surveyor, in 1820.

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The private claims by James Dowell in 1830 and 1831.

SURVEYOR'S OFFICE,
Florence, 12 *March*, 1832.

Examined, signed.

JOHN COFFEE,
Surveyor.

SURVEYOR'S OFFICE,
Florence, Alab'a, 30 *March*, 1843.

This is believed to be a true copy of the fractional township No. 4 south, range 1 west, as approved by Gen'l Coffee.

JAS. H. WEAKLEY,
Surv'r Gen'l of the Public Lands in Ala.

LAND OFFICE, ST. STEPHEN'S, ALA.,
25 *Nov.*, 1850.

I do hereby certify that the within diagram of frac'l section 22–27, and the private claims adjoining, is a correct copy from the original.

Township plat of township 4 So., R. 1 W., was approved by Gen'l Coffee in 1832, March 1st., agreeing with the duplicate copy furnished to this office by Surv'r Gen'l Weakley, dated 30 March, 1843.

Witness my hand and seal, (private,) having no seal of office.

JAMES MAGOFFIN, [SEAL.]
Register.

LAND OFFICE, ST. STEPHEN'S, ALA'B,
25 *November*, 1850.

I do hereby [certify] that the within diagram is a correct copy from the original plat on file in this office, on which all locations of pre-emption claims were made, under the act of Congress approved 29 May, 1830, and also, all sales of land in township 4 south, range 1 west, that were made since that period.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, [SEAL.]
Register.

Township 4 S., range 1 west.

[For diagram, see page 61.]

The sectional lines surveyed by C. C. Stone in 1820.

The private claims by James Dowell in 1831, and resurveyed by Andrew Henshaw and John James in December, 1834 and January, 1835.

The claim of Josiah Blakely, in the Island, was surveyed in Au-

gust, 1835; the Price claim in Feb'y, 1836; and the claim of Martha Dolive in July, 1836—all by John James, deputy surveyor.

SURVEYOR'S OFFICE, FLORENCE, ALABA.,
19*th April*, 1837.

Examined and approved.

JAS. H. WEAKLEY, *Surv'r.*

LAND OFFICE, ST. STEPHEN'S, ALA.,
25*th Nov.*, 1850.

I do hereby certify that the annexed and foregoing is correct diagram of sections 22 and 27, as the same is found on the approved township plats four south, range one west, as the same is found in this office.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, [SEAL.]
Register.

Township four south, range one west.

[For diagram, see page 62.]

SURVEYOR'S OFFICE, FLORENCE, ALABA.,
8*th April*, 1844.

Examined and approved.

JAS. H. WEAKLEY,
Surv'r Gen'l of the Public Lands in Alaba.

LAND OFFICE, ST. STEPHEN'S, ALABA.,
25*th Novem.*, 1850.

I do hereby certify that the annexed and foregoing diagram of sections 22 and 27 is a correct copy from the approved township plat four south, range one west, as the same is found on file in this office.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, [SEAL.]
Register.

[For diagram, see page 62.]

Exhibit E.

Pursuant to an order from the principal deputy surveyor of the land district east of the island of New Orleans, and in conformity with a certificate, No. 11, from the commissioners appointed under authority of the act of Congress of April 25th, 1812, and recognized by a subsequent act, approved March 3d, 1819, I have surveyed a tract of land claimed by the heirs of Antonio Espejo,

Township Four South, Range One West

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on bayou Chattique, or Three-Mile creek, in the State of Alabama, being section No. 25, in township 4 of range No. 1, west of the basis meredian, and south of the 31st degree of latitude, and bounded as follows: Beginning in the ford or old crossing place of Three-Mile creek, from which a water oak bears S. 2° 30′ west 125 links, which I marked XIII, formerly marked thus, T. 4 R. 1, as mentioned by Fulsom's. Live oak bears S. 9° east, 125 links, XIII; then S. 6° 5′ W., at 38 chains 50 links on China tree, in the corner of Centre's yard, bears N. 84° W. 70 links; at 108 chs., found my line to correspond with the line of Fulsom; and being the first marks seen on the line, at 120 chs. 30 lks set a post, from which a pine bears N. 19° 30′ E. 68 lks. IIII, also a pine, No. 1° W., 69 lks. IIII; thence No. 56° E. 75 chs. 50 lks. to a pine (now a stump) indentified as the true corner; thence No. 6° 45′ E., at 32 chs. 33 lks., intersected line between sections 15 and 22, T. 4 S. R. 1 W., being 17 chs. 97 lks. east of corner of sections 16-21 15-22, at 85 chs. 17 links; set a post on south boundary of new road, from which a stone monument, marked K., (Kennedy,) bears N. 84° 30′ W. 70 lks. 93 chs. 50 lks. to a post on the south boundary of William Fisher; thence with said line N. 60° W. 8 chs. 75 lks.; thence N. 5° E. 23 chains to a post on Three-Mile creek; thence up the creek, with its meanders, S. 52° W. 69 chains, to the place of beginning—containing 696 acres and 35-hundredths of an acre, and having such a shape, form, and marks, natural and artificial, as are represented in the above plat and description, the 16th day of January, 1835.

(Signed) ANDREW HENSHAW,
Dep. Surveyor.

Examined and approved, 29 June, 1835.

(Signed) JAMES H. WEAKLY,
Surveyor U. S. lands in Alabama.

No. 11. LAND OFFICE,
St. Stephen's, Alabama.

We hereby certify that, by the second section of the act of Congress, approved on the third day of March, 1819, entitled "An act for the adjusting claims to land and establishing land offices in the district east of the island of New Orleans," the claim of Catharine Mottus, Gertrude Espejo, Anthony Espejo, and Catharine Espejo, in the right of Anthony Espejo, entered as claim No 41 in abstract No 3 of the commissioner, was confirmed, and that it appears by the accompanying plat of the survey thereof that the said claim has been surveyed and designated as section No. twenty-five, in township No. 4 of range No. one west, containing six hundred and ninety-six acres and thirty-five hundredths of an acre.

Now therefore be it known, that on the presentation of this certificate to the Commissioner of the General Land Office, the said

bile county, do hereby certify that the foregoing sixty pages contain a full and complete transcript of all the proceedings had in the cause hereinbefore stated, as the same appear of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this twenty-first day of May, in [SEAL.] the year of our Lord one thousand eight hundred and fifty-five.

Attest: J. I. T. WILSON, *Clerk.*

Assignment of errors.

In the supreme court, June term, 1855.

CHARLES W. GAZZAM
vs.
DOE ex dem., ELAM PHILIPS & Wife et als.

The appellant comes and assigns as errors, 1st. The charges given by the court to the jury; 2d. The refusals of the court to charge the jury as asked by the plaintiff, as shown by the bill of exceptions.

CHANDLER, SMITH, & HERNDON,
For Appellant.

And afterwards, to wit, on the 7th day of March, 1856, the following judgment was rendered in said cause, viz:

Judgment.

CHARLES W. GAZZAM
vs.
JOHN DOE ex dem., ELAM PHILIPS and Mary, his wife. } 1 div., 2959, Mobile cir. co.

Came the parties by their attorneys, and the record and the matters assigned for error therein being argued and examined, it seems to the court that, in the record and proceedings of said circuit court of Mobile county, there is no error.

It is therefore considered by the court, that said judgment of said circuit court be affirmed, and that said appellees recover of said appellant and of B. S. Skaates, his surety, the costs of this court, and of said circuit court.

Writ of error bond.

Know all men by these presents, that we, Charles W. Gazzam

& , are held and firmly bound unto Elam Philips and Mary, his wife, and Ashly W. Etheridge, in the full and just sum of three thousand dollars to be paid to the said Elam Philips and Mary Philips, his wife, and Ashly W. Etheridge, certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-first day of March, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas lately, at a term of the supreme court of the State of Alabama, in a suit depending in said court, between Charles W. Gazzam, appellant, and said Philips and wife and said Etheridge, appellees, judgment was rendered against the said Gazzam; and the said Gazzam having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Elam Philips and wife and Ashly W. Etheridge, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Charles W. Gazzam shall prosecute his suit to effect, and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

C. W. GAZZAM, [SEAL.]
SIDNEY SMITH, [SEAL.]

Sealed and delivered in presence of—

Approved by

JOHN A. CAMPBELL,
Asso. Just. S. C. U. S.

Filed March 24th, 1856.

JN. D. PHELAN, *Clerk.*

Writ of error.

UNITED STATES OF AMERICA:

The President of the United States to the honorable the supreme court of the State of Alabama, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Alabama, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles W. Gazzam, appellant, and Doe on the demise of Elam Philips and Mary Philips, his wife, and Ashby W. Etheridge, appellees, in said supreme court of Alabama,

bile county, do hereby certify that the foregoing sixty pages contain a full and complete transcript of all the proceedings had in the cause hereinbefore stated, as the same appear of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this twenty-first day of May, in [SEAL.] the year of our Lord one thousand eight hundred and fifty-five.

Attest: J. I. T. WILSON, *Clerk.*

Assignment of errors.

In the supreme court, June term, 1855.

CHARLES W. GAZZAM
vs.
DOE ex dem., ELAM PHILIPS & Wife et als.

The appellant comes and assigns as errors, 1st. The charges given by the court to the jury; 2d. The refusals of the court to charge the jury as asked by the plaintiff, as shown by the bill of exceptions.

CHANDLER, SMITH, & HERNDON,
For Appellant.

And afterwards, to wit, on the 7th day of March, 1856, the following judgment was rendered in said cause, viz:

Judgment.

CHARLES W. GAZZAM
vs.
JOHN DOE ex dem., ELAM PHILIPS and Mary, his wife. } 1 div., 2959, Mobile cir. co.

Came the parties by their attorneys, and the record and the matters assigned for error therein being argued and examined, it seems to the court that, in the record and proceedings of said circuit court of Mobile county, there is no error.

It is therefore considered by the court, that said judgment of said circuit court be affirmed, and that said appellees recover of said appellant and of B. S. Skaates, his surety, the costs of this court, and of said circuit court.

Writ of error bond.

Know all men by these presents, that we, Charles W. Gazzam

3088

& , are held and firmly bound unto Elam Philips and Mary, his wife, and Ashly W. Etheridge, in the full and just sum of three thousand dollars to be paid to the said Elam Philips and Mary Philips, his wife, and Ashly W. Etheridge, certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-first day of March, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas lately, at a term of the supreme court of the State of Alabama, in a suit depending in said court, between Charles W. Gazzam, appellant, and said Philips and wife and said Etheridge, appellees, judgment was rendered against the said Gazzam; and the said Gazzam having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Elam Philips and wife and Ashly W. Etheridge, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Charles W. Gazzam shall prosecute his suit to effect, and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

C. W. GAZZAM, [SEAL.]
SIDNEY SMITH, [SEAL.]

Sealed and delivered in presence of—
Approved by
JOHN A. CAMPBELL,
Asso. Just. S. C. U. S.

Filed March 24th, 1856.

JN. D. PHELAN, *Clerk.*

Writ of error.

UNITED STATES OF AMERICA:

The President of the United States to the honorable the supreme court of the State of Alabama, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Alabama, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles W. Gazzam, appellant, and Doe on the demise of Elam Philips and Mary Philips, his wife, and Ashby W. Etheridge, appellees, in said supreme court of Alabama,

wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission,—a manifest error hath happened, to the great damage of the said Charles W. Gazzam, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, this first Monday of December, in the year of our Lord one thousand eight hundred and fifty-six.

JNO. D. PHELAN,
Clerk of the Supreme Court of the State of Alabama.

Allowed by
J. A. CAMPBELL,
Asso. Jus. S. C. U. S.

Filed in office March 24, 1854.

JNO. D. PHELAN, *Clk.*

Citation.

The United States of America to Elam Philips and Mary Philips, his wife, and Ashby W. Etheridge, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Alabama, wherein Charles W. Gazzam is plaintiff in error, and Elam Philips and Mary Philips, his wife, and Ashby W. Etheridge, are defendants in error, to show cause, if any there be, why the judgment ren-

dered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John A. Campbell, one of the associate justices of the Supreme Court of the United States of America, this twenty-first day of March, in the year of our Lord one thousand eight hundred and fifty-six.

J. A. CAMPBELL,
Asso. Justice S. C. U. S.

Filed in office March 24, 1856.

JNO. D. PHELAN, *Clk.*

STATE OF ALABAMA,
City and County of Montgomery.

I, John D. Phelan, clerk of the supreme court of the State of Alabama, do hereby certify that the foregoing pages, numbering from one to inclusive, contain a full, true, and perfect transcript of the original record on file in my office, in the case therein entitled, wherein Charles W. Gazzam is plaintiff, and John Doe on the demise of Elam Philips and Mary Philips, and Ashby W. Etheridge, are defendants, together with the judgment therein rendered, and all proceedings therein had, in said court—the writ of error, bond, citation, as appears of record in my office.

In testimony whereof, I have hereunto set my hand and the seal of the court affixed this twenty-second day of November, in the year of our Lord eighteen hundred and fifty-six.

[SEAL.]

Attest:

JOHN D. PHELAN,
Clk of the Supreme Co. of the State of Alaba.